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**The Freedom and Authority of Conscience: Religion and
Politics in the Thought of Lord Herbert of Cherbury
(1582-1648)**

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History

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Declaration

I hereby declare that this thesis was composed by me, and that the work contained herein is my own except where explicitly stated otherwise in the text, and that this work has not been submitted for any other degree or professional qualification except as specified.

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Abstract

This thesis focuses on a long-misunderstood person – Edward, Lord Herbert of Cherbury (1582-1648), a diplomat, philosopher, and historian. He has been labelled ‘the father of English deism’, a title invented by John Leland (1691-1766) more than a hundred years after his death. Although this label has recently been challenged, modern scholarship continues to pay disproportionate attention to Herbert’s religious ideas, while research on political and historical aspects of his thought remains quite underdeveloped. This thesis places Herbert in the context of contemporary issues of religion and politics, including the controversy over the royal supremacy, the relationship between King and Parliament, and debates over the lawfulness of resistance to tyrants in the Early English Civil War. It argues that his viewpoints on these issues reflected his deep concern for the freedom and authority of individual conscience. Herbert held that laws enacted in the name of the royal supremacy should not force individuals to accept anything contrary to the judgement of their consciences. He also suggested that the safety and liberty of the people took priority over the prerogatives of the King, and that Parliament, as the highest court in the kingdom, had the authority to protect the people’s consciences from the oppression of the King’s unlawful commands. Finally, Herbert held that resistance to tyrants was indeed lawful and that conscience granted that a tyrant’s misdeeds could lawfully be bridled.

The thesis is based on a close analysis of Herbert’s religious treatises, his manuscript collections deposited in the National Library of Wales, and his historical works, including ‘On the King’s Supremacy in the Church’ and *The Life and Raigne of King Henry the Eighth*. His manuscript collections and historical treatises in

particular have never been properly examined. The main contributions of the thesis are to restore Herbert's thought to its seventeenth-century context, broaden the research on Herbert to include his political thought, and reveal that the common purpose of his works of philosophy, religion, and history was to save the people from unjust religious coercion. This approach provides a more comprehensive understanding and a more complete picture of Herbert's thought, and challenges several commonly held views of Herbert: that Herbert's thought was a precursor to eighteenth-century deism, that his theory of common notions represented the whole picture of his thought, and that his historical works were of little value and aimed only at gaining royal recognition.

Lay Summary

This thesis focuses on a long-misunderstood person – Edward, Lord Herbert of Cherbury (1582-1648), a diplomat, philosopher, and historian. In the middle of the eighteenth century John Leland denounced Herbert as ‘the father of English deism’, a label unchallenged until very recently. This label suggested that he was a forerunner of those who believed that religion had to be placed on rational foundations rather than on a belief in Scriptural authority. As a result, the attention of most previous scholars has been directed to his religious thought, and research on other aspects of his thought is very underdeveloped. By contrast, this thesis places him in the context of contemporary issues of religion and politics, including controversies over the power of kings over the established church, the relationship between the King and Parliament, and the lawfulness of resistance to tyrants in the Early English Civil War. It argues that his viewpoints on these contemporary issues reflected his deep concern for the freedom and authority of individual conscience. Herbert held that individual conscience weighed more heavily than the king’s authority, that Parliament could best protect the people’s conscience from the oppression of the king’s unlawful commands, and that conscience granted that the people could lawfully resist a tyrant. This thesis provides the first detailed account of Herbert’s participation in contemporary issues of religion and politics, and it does so by analysing his religious treatises, his manuscript collections deposited in the National Library of Wales, and his historical works, including ‘On the King’s Supremacy in the Church’ and *The Life and Raigne of King Henry the Eighth*. Many of these sources have received little or no attention before.

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In the end, I would like to thank everyone who participated and continues to participate in my life. The value of a doctoral thesis in history may not be obvious from a narrow utilitarian point of view, but its true value will transcend its author.

Abbreviations Used in References

- AB* Edward Herbert, *The Autobiography of Edward, Lord Herbert of Cherbury*, ed. Sidney Lee (London: G. Routledge, 1906).
- DV* Edward Herbert, *De Veritate*, ed. and trans. Meyrick Heath Carré (Bristol: J.W. Arrowsmith Ltd, 1937).
- DRL* Edward Herbert, *Lord Herbert of Cherbury's De Religione Laici*, ed. Harold R. Hutcheson (New Haven: Yale University Press, 1944).
- DRG* Edward Herbert, *Pagan Religion: A Translation of De Religione Gentilium*, trans. J. A. Butler (Ottawa; Binghamton, NY: Dovehouse; Medieval & Renaissance texts & studies, 1996).
- L&R* Edward Herbert, *The Life and Raigne of King Henry the Eighth* (London: Printed by E. G. for T. Whitaker, 1649).
- Dialogue* Edward Herbert, *A Dialogue between a Tutor and His Pupil* (London: Printed for W. Bathoe, 1768).
- KSC* Edward Herbert, 'On the King's Supremacy in the Church', in *Lord Herbert of Cherbury's De Religione Laici*, ed. Harold R. Hutcheson (New Haven: Yale University Press, 1944), pp. 183-186.

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Chapter 1: Introduction

This doctoral thesis focuses on a long-misunderstood person – Edward, Lord Herbert of Cherbury (1582-1648).¹ He has often been described as ‘the father of English deism’, a title coined by John Leland (1691-1766) that became a cliché prevalent till the present day.² Modern scholarship, as the following literature survey will show, has given disproportionate attention to Herbert’s religious thought. This thesis, in contrast, will investigate Herbert’s thought from a new perspective by putting him in the historical context of the early seventeenth century and by shifting the focus from his religious thought to his historical and political thought. Aiming to broaden the horizon of research on Herbert, this thesis intends to present Herbert’s view on contemporary issues of religion and politics by incorporating and analyzing his religious treatises, his historical works – including ‘On the King’s Supremacy in the Church’ written in 1635 and *The Life and Raigne of King Henry the Eighth* published in 1649 – and his private collections deposited in the National Library of Wales. The goal of the thesis is to show that Herbert was involved not merely with the deistical controversy in the eighteenth century but also with very important questions concerning religion and politics in his own time. Herbert’s viewpoints on the royal supremacy, the relationship between King and Parliament, and the resistance to tyrants not only echoed his theory of conscience as presented mainly in *De Veritate*

¹ ‘Cherbury’ was sometimes spelled ‘Chirbury’. Among modern works, ‘Chirbury’ was only used in Rossi’s study of Herbert and in the article of George Herbert (now Earl of Powis). Mario M. Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, 3 vols (Firenze: G. C. Sansoni, 1947); George Herbert, ‘A Further Note on Lord Herbert of Chirbury and His Son Richard’, *Huntington Library Quarterly* 46, no. 4 (1983): 331–32. John Butler argued that the spelling ‘Chirbury’ is correct while ‘Cherbury’ is wrong, which was confirmed by Lord George Herbert (the ‘ir’ spelling was used in the patent of nobility for Edward Herbert). See John Butler, ‘Introduction’, in *DRG*, 23. However, over the centuries the spelling ‘er’ has become a widely recognised usage, and for this reason I retain it in my thesis.

² Sidney Lee, ‘Introduction’, in *AB*, xxxv. For Leland’s viewpoint see John Leland, *A View of the Principal Deistical Writers* (London: Printed for B. Dod, 1754), 4–5.

(published in 1624), but also revealed his deep concern for the freedom and authority of the individual's conscience.

The first section of this chapter examines the development of research on Herbert mainly over the past century and outlines the purpose and structure of this thesis. The second section introduces six manuscripts related to contemporary issues of religion and politics from Herbert's collections now deposited in the National Library of Wales. These works will form the intellectual basis of the discussion in chapters 4 and 5.

1.1 A critical literature survey

This thesis focuses on the latter part of Herbert's career, from 1624, when he lost the position of ambassador to France, till his death in 1648. Though he did not obtain any more prominent position at court, he became a scholar and completed many important works during this period. Before he was recalled from France he had already been acquainted with many important continental scholars such as Isaac Casaubon (1559-1614), Marin Mersenne (1588-1648), and Hugo Grotius (1583-1645); Herbert's best-known work *De Veritate* had benefited greatly from their writings.³ After Herbert returned to England he stayed at court to seek the opportunity to provide his services. In 1625 he became a member of the Council of War, and before 1630 he was commissioned by King Charles I to write *The Expedition to the Isle of Rhe* in defence of the failed military expedition launched by his patron the Duke of Buckingham.⁴ Then, he started *The Life and Raigne of King Henry the Eighth* at the command of the

³ *AB*, 56; R. W. Serjeantson, 'Herbert of Cherbury before Deism: The Early Reception of the *De Veritate*', *The Seventeenth Century* 16, no. 2 (2001): 218–19; R. D. Bedford, *The Defence of Truth: Herbert of Cherbury and the Seventeenth Century* (Manchester: Manchester University Press, 1979), 213.

⁴ *AB*, 141; Eugene D. Hill, *Edward, Lord Herbert of Cherbury* (Boston: Twayne, 1987), 51–53.

King and was permitted to exploit the Cotton Library and royal libraries. During the 1630s Herbert had collected a large amount of printed works and private papers, and he continued to do so until his death. At the same time, he had constructed a network with contemporary scholars, including Sir Robert Cotton (1570-1631) and John Selden (1584-1654). In 1640 Herbert sat as a member of the Lords and when the Civil War broke out in 1642 he chose to join the King in York;⁵ however, he soon withdrew to Montgomery before surrendering his castle to the parliamentary army in 1644. During the 1640s, Herbert continued his scholarly work. He not only wrote his autobiography (first published in 1764 by Horace Walpole) but also completed his final religious treatises, *De Religione Laici* (published in 1645), *De Religione Gentilium* (published posthumously in 1663 in Amsterdam), and *A Dialogue Between A Tutor and his Pupil* (published in 1860).

Herbert's later career and writings, however, have long been regarded as a series of failures mainly due to a continuation of the Life of Herbert by Sir Sidney Lee (first published in 1886). Although it could be argued that Herbert obtained little public success at court, the same was not true of his scholarly achievements. Lee seems not to have acknowledged the value of Herbert's later writings because of his lack of public success during these decades. Lee claimed that Herbert reached the peak of his career when he was ambassador to France, between 1619 and 1624, and that after that his public life was 'a dreary series of disasters'.⁶ According to Lee, Herbert continued to seek a position at court though he kept suffering 'defeat and disgrace'.⁷ By completing *The Expedition to the Isle of Rhe*, *The Life and Raigne of King Henry the Eighth*, and 'On the Royal Supremacy over the Church', Herbert aimed at little more than obtaining royal recognition; among these writings, Lee singled out 'On the Royal

⁵ AB, 146.

⁶ Sidney Lee, 'Introduction', in AB, xxi.

⁷ Ibid.

Supremacy over the Church' as a 'very imperfect and servile' piece of work.⁸ As to Herbert's *De Veritate*, Lee commented that it was 'little better than abortive'.⁹ Furthermore, Lee stated that the outbreak of the English civil war 'seemed to him [Herbert] more opportune than ever for pressing his demand for recompense and recognition'.¹⁰ Lee gave his readers the impression that Herbert became an opportunist during his later career. This narration proved influential. Later scholars M. H. Carré, Mario M. Rossi, and R. H. Hutcheson agreed that Herbert obtained no great achievement in the latter part of his career, and that the birth of his works depended on the opportunities given by circumstances.¹¹ Similarly, Margaret Bottrall wrote that Herbert had 'twenty years of frustration' after he was deprived of the office of ambassadorship to France.¹² E. E. Kimmelman had the same opinion that Herbert after 1624 'lingered in the shadows of the court, never to achieve status or power'.¹³

The twentieth century witnessed a growing interest in Herbert's works, and this can be attributed to the publication of Herbert's verses and the translations of Herbert's religious treatises from Latin to English, which made the works more accessible to general readers. G. C. Moore Smith, a scholar and antiquary, published Herbert's English and Latin verses in 1923.¹⁴ M. H. Carré translated the third version of *De Veritate* and published it in 1937, while R. H. Hutcheson published a translation

⁸ *AB*, 141-44.

⁹ Sidney Lee, 'Introduction', in *AB*, xxxiii.

¹⁰ *AB*, 144.

¹¹ After referring to Lee's work, Carré asserted that Herbert's later career was 'a distressing story of disillusionment, of vain struggles for recognition' and that his historical works 'were elaborate endeavours to attract the royal favour'. See Carré, 'the introduction', in *DV*, 11. Hutcheson agreed with Lee that Herbert 'begged for his title' and sought for royal recognition, but he was aware of Lee's harsh attitude towards Herbert. See *DRL*, 21. For Rossi's comment, see Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, vols 2, 464. I am indebted to the work of Eugene Hill for Rossi's point of view; Hill, *Edward, Lord Herbert of Chirbury*, 13.

¹² Margaret Bottrall, *Every Man a Phoenix; Studies in Seventeenth-Century Autobiography* (London: Murray, 1958), 57.

¹³ Elaine Escoll Kimmelman, 'Lord Herbert of Chirbury as Historian' (PhD Thesis; Harvard University, 1977), 9.

¹⁴ G. C. Moore Smith, ed., *The Poems, English and Latin, of Edward Lord Herbert of Chirbury* (Oxford: Clarendon Press, 1923).

of *De Religione Laici* in 1944.¹⁵ The above three publications are the main scholarly editions to date. Exploiting the original manuscripts of Herbert now kept by the National Library of Wales, J. M. Shuttleworth published a new edition of Herbert's autobiography with a less harsh introduction in 1976, nine decades after the original publication of Herbert's autobiography by Sir Sidney Lee.¹⁶ J. A. Butler translated Herbert's *De Religione Gentilium* and published it in 1996, which replaced an old translation published in 1705 by William Lewis.¹⁷

Indebted to the publications and translations of Herbert's works, scholars started investigating the original meaning of the works, especially the best known of these, *De Veritate*. Ever since Herbert obtained his title 'the father of English deism' due to the five religious common notions argued for in the work –¹⁸ a title to suggest that he was a progenitor of those who believed that religion had to be placed on rational foundations rather than supernatural beliefs –,¹⁹ it has been viewed as a work on religion rather than philosophy.²⁰ Charles de Rémusat (1797-1875) and W. R. Sorley

¹⁵ Interested in Herbert's philosophy, Carré translated Herbert's work from Latin to English with an intention to promote English research on *De Veritate*. See the preface by Carré in *DV*. Hutcheson found Herbert's work interesting when he reviewed the study on seventeenth-century scepticism. See *DRL*, preface. Different but secondary versions of *De Religione Laici* had been noticed – by secondary I mean they were not published by Herbert but remained as private manuscripts. Herbert G. Wright published a manuscript of *De Religione Laici* deposited in the National Library of Wales, while S. E. Sprott noticed another copy kept by Sir William Osler Library at McGill University. Both of them are different copies of the same work. See Herbert Wright, 'An Unpublished Manuscript by Lord Herbert of Cherbury Entitled "Religio Laici"', *The Modern Language Review* 28 (1933): 295–307. S. E. Sprott, 'The Osler Manuscript of Herbert's "Religio Laici"', *The Library* 11 (1956), no. 2 (1): 120–22.

¹⁶ Edward Herbert, *The Life of Edward, First Lord Herbert of Cherbury Written by Himself*, ed. J. M. Shuttleworth (London: Oxford University Press, 1976), ix–xxiii.

¹⁷ *DRG*. For the weakness of Lewis' translation (Edward Herbert, *The Antient Religion of the Gentiles*, trans. William Lewis [London: Printed for John Nutt near Stationers-Hall, 1705]), see Butler's introduction to his translation *DRG*.

¹⁸ They are as follows: that there is a supreme God, that it is our duty to worship this Sovereign Deity, that the obedience to practice virtue is a dominant part of religious worship, that repentance is needed to expiate one's vice and evil behaviour, and that a reward or a punishment exists in the afterlife. See *DV*, 289–300.

¹⁹ Justin Champion, 'Deism', in *The Columbia History of Western Philosophy*, ed. Richard Henry Popkin and Stephen F. Brown (Columbia University Press, 2005), 437–38; Leland, *A View of the Principal Deistical Writers*, 4–5.

²⁰ In the former part of the twentieth century, Charles Lytton stood against the tide. He insisted that Herbert was not a deist, that his autobiography 'is permeated by this spirit of scrupulous candor' and that *De Veritate* was 'his daring manifesto of freethought theism'. See Charles Lytton, 'Lord Herbert of Cherbury, Apostle of Ethical Theism.', *Church History* 4 (1935): 252–53.

(1855-1935) were the forerunners to focus on Herbert's philosophical themes without preconceiving him as a deist.²¹ In the latter part of the twentieth century, some scholars joined them to examine and reevaluate the philosophical themes of the work. Showing that Herbert was searching for the way to truth, R. H. Popkin argued that Herbert wrote *De Veritate* against Pyrrhonism, though he failed to attain that goal.²² Another similar but more comprehensive work was R. D. Bedford's *The Defence of Truth* published in 1979. It not only analyzed Herbert's philosophical system and its origin, but also doubted whether Herbert could be regarded as a forerunner of the deistical movement in the eighteenth century.²³

Some scholars such as D. A. Pailin put effort into casting away Herbert's prejudicial title 'the father of English deism'. After showing that the title was invented by John Leland (1691-1766) and became a widely accepted label of Herbert till the present,²⁴ Pailin demonstrated that the meaning of the word deist 'depends upon who is using it and about whom it is being used'; hence, to say that Herbert is a deist is not an adequate or a clear statement.²⁵ Moreover, it is questionable that English deism derived from Herbert's works, according to Pailin.²⁶ Similarly, R. W. Serjeantson, by tracing the responses of Herbert's contemporaries to *De Veritate*, found that in his lifetime it was never regarded as a work against revealed religion, and that in the eyes of Herbert's contemporaries he was far from a 'conspicuous enemy of Christianity'.²⁷ Meanwhile, some scholars have tried to investigate the true meanings and purposes of

²¹ Charles de Rémusat, *Lord Herbert de Cherbury, Sa Vie et Ses Oeuvres Ou Les Origines de La Philosophie Du Sens Commun et de La Théologie Naturelle En Angleterre* (Paris, 1874); W. R. Sorley, 'The Philosophy of Herbert of Cherbury', *Mind* 3, no. 12 (1894): 491–508.

²² Richard H Popkin, *The History of Scepticism from Erasmus to Descartes*. (Assen: Van Gorcum, 1964), 155–65.

²³ Bedford, *The Defence of Truth*, 256.

²⁴ For Leland's viewpoint see Leland, *A View of the Principal Deistical Writers*, 4–5.

²⁵ Pailin, 'Should Herbert of Cherbury Be Regarded as a "Deist"?', 128–31.

²⁶ *Ibid.*, 122–28.

²⁷ Serjeantson, 'Herbert of Cherbury before Deism', 217–27. CF: 'He [Herbert] was not a self-conscious radical who set out to overturn traditional Christian self-understanding'. Pailin, 'Herbert of Cherbury and the Deists', 200.

De Veritate and his religious treatises. Pailin maintained that Herbert proposed his theory intending to tackle both ‘the bigotry of those who held fanatically to the truth of certain beliefs’ and the scepticism of those who doubted anything can be known. Furthermore, Pailin thought that Herbert’s five religious common notions aimed to save people from the abuse of the priestly class.²⁸ Agreeing with Pailin’s last point, J. A. Butler stressed that *De Veritate* was ‘an eirenic religious treatise’, and by this work Herbert intended to ‘protect lay-people from the distortions of religious authority’.²⁹ R. A. Johnson, by analyzing young Herbert’s experience and the worship habits of his mother Magdalen Herbert, deemed Herbert as ‘a reformer of political theology’, and he maintained that Herbert’s five religious common notions were responses to ‘the crisis of political theology precipitated by the many bloody and long-lasting religious wars of that era’.³⁰

The abovementioned development of research on Herbert indicates that his philosophical and religious works have received a better evaluation recently; but it also shows that Herbert’s religious thought, especially the five religious common notions, has continued to receive disproportionate attention. Scholars have devoted the lion’s share of their efforts to discussing *De Veritate* and other religious treatises, including *De Religione Laici* and *De Religione Gentilium*.³¹ Meanwhile, other important aspects of Herbert’s thought remain quite underexamined or even neglected. In the twentieth century most research investigating Herbert’s verses and

²⁸ Pailin, ‘Should Herbert of Chirbury Be Regarded as a “Deist”?’ 132.

²⁹ Butler, *Lord Herbert of Chirbury (1582-1648): An Intellectual Biography*, 173.

³⁰ Johnson, *Peacemaking and Religious Violence: From Thomas Aquinas to Thomas Jefferson*, 195–96. By ‘a reformer of political theology’ Johnson meant that Herbert intended to appease theological disputes and religious wars in this era by proposing his religious common notions.

³¹ For research focusing on Herbert’s five religious common notions or his critic on priestcrafts, see Peter Harrison, *‘Religion’ and the Religions in the English Enlightenment* (Cambridge: Cambridge University Press, 1990), 61–85; A Tadie, ‘Lord Herbert of Chirbury’s Idea of Ultimate Reality and Meaning and a Note on the Popularization of Deism’, *Ultimate Reality and Meaning* 18, no. 4 (1995): 264–74.

autobiography belong to small scale studies.³² Similarly, there exist only a few studies on Herbert's historical thought. In addition to a doctoral study 'Lord Herbert of Cherbury as Historian' by E. E. Kimmelman,³³ the twentieth century witnessed only short discussions of Herbert's historical thought.³⁴ Intending to attract general readers' attention to every aspect of Herbert's thought, Eugene Hill published *Edward, Lord Herbert of Cherbury* in 1987, introducing all of Herbert's works, including *De Veritate*, religious treatises, historical works, verses, and autobiography.³⁵ Hill's work suggests that Herbert's thought, especially other aspects, deserves more attention from readers.

At the same time I intend to demonstrate two weaknesses of the research that focuses only on Herbert's religious tenets. First, although Herbert became well-known or notorious several decades after his death due to the five religious common notions, these notions are only part of his larger system of thought, and they are not in themselves sufficient. As Herbert said, his theory of truth is 'the product both of Nature and of Grace', or the outcome of universal providence and particular providence – common notions belong to Nature or universal providence.³⁶ In another place Herbert stated that 'I am aware of the commonly held opinion that Common Providence is not sufficient without the concurrence of Grace and Particular

³² J. Hebel, "'A Divine Love" Addressed by Lord Herbert to Lady Bedford?', *The Modern Language Review* 20 (1925): 74–76; Basil Willey, 'Lord Herbert of Cherbury: A Spiritual Quixote of the Seventeenth Century', *Essays and Studies* 27 (1941): 22–29; Don A. Keister, 'The Birth Date of Lord Herbert of Cherbury', *Modern Language Notes* 62, no. 6 (1947): 389–393; Don A. Keister, 'Donne and Herbert of Cherbury: An Exchange of Verses', *Modern Language Quarterly* 8, no. 4 (December 1947): 430–34; Paul Delany, *British Autobiography in the Seventeenth Century* (London: Routledge & KPaul, 1969), 125–27; Thurston Dart, 'Lord Herbert of Cherbury's Lute Book', *Music and Letters* 38 (1957): 136–148; Jeffrey P Powers-Beck, *Writing the Flesh: The Herbert Family Dialogue* (Pittsburgh, Pa.: Duquesne University Press, 1998), 120–43.

³³ Kimmelman, 'Lord Herbert of Cherbury as Historian', 1977.

³⁴ W. Moelwyn Merchant, 'Lord Herbert of Cherbury and Seventeenth-Century Historical Writing', *Transactions of the Honourable Society of Cymmrodorion*, 1956, 57–63; D. R. Woolf, *The Idea of History in Early Stuart England: Erudition, Ideology, and 'The Light of Truth' from the Accession of James I to the Civil War* (Toronto; Buffalo: University of Toronto Press, 1990), 132–40.

³⁵ Hill, *Edward, Lord Herbert of Cherbury*.

³⁶ *DV*, 77.

Providence'.³⁷ In brief, common notions are not the whole picture of Herbert's theory, and so far, the role of Grace or particular providence in Herbert's thought has been neglected by scholars, including those who have recently challenged Herbert's title, 'the father of English deism'. Secondly, such research often separates Herbert's religious tenets from his entire system, or separates them from Herbert's personal experience, his intentions, and historical contexts. For instance, by relating Herbert to a discussion of heathen religion and priestcraft during 1660 to 1730, Justin Champion suggests that Herbert's anticlericalism is a field worth exploring;³⁸ however, this argument was far from Herbert's irenic intention and may leave readers with the impression that Herbert intended to subvert Christianity.

The importance of Herbert as a scholar in the latter part of his career is also underestimated. Lee discredited the value of Herbert's treatises written during this period, and thought that they were composed only to attract royal recognition;³⁹ however, this is not the case. In 1631 when Herbert was writing *The Life and Raigne of King Henry the Eighth*, Herbert's friend Sir Robert Harley said that 'my Lord Herbert is a greate scholar'.⁴⁰ Depicting Herbert as 'an industrious Collector, as well as a curious Judge of the most Valuable and Critical Books', William Lewis, the contemporary translator of *De Religione Gentilium*, stated that Herbert was a man of letters and that he 'kept a constant Correspondence with most of the Learned Men in his Time'.⁴¹ James Ussher, a well-known scholar and later Archbishop of Armagh and

³⁷ DRG, 55.

³⁸ He also believed that Herbert is 'of particular importance in the development of this deistical history of religion'. See Justin Champion, *The Pillars of Priestcraft Shaken: The Church of England and Its Enemies, 1660-1730* (Cambridge: Cambridge University Press, 1992), 140-48.

³⁹ AB, 141-44.

⁴⁰ Sir Robert Harley to John Brinsley, 1631, December 8. Richard Ward, ed., *The Manuscripts of His Grace the Duke of Portland*, vol. 3-4 (London: Printed for H.M. Stationery off., by Eyre and Spottiswoode, 1894), 30.

⁴¹ Herbert, *The Antient Religion of the Gentiles*, trans. William Lewis, viii.

Primate of All Ireland, had heard of Herbert in 1624,⁴² and was due to give the sacrament to Herbert on his death-bed (although in the event he refused to do so).⁴³ The public record also reveals that Herbert had been acquainted with Sir Robert Cotton in 1626.⁴⁴ Even Sir Sidney Lee, who had a negative view of the latter part of Herbert's career, recorded that Herbert had visited France and met Pierre Gassendi (1592-1655) in September 1647; this indicates that Herbert kept in touch with contemporary scholars before his death.⁴⁵

As Herbert's religious works have been misunderstood, so have his historical works suffered unfair evaluations and neglect. Herbert's historical works began receiving negative comments from the mid-eighteenth century. Denouncing Herbert as a man of 'infidelity' whose object was 'to show the all-sufficiency of natural religion', Charles Mills (1788-1826) sarcastically described *The Life and Raigne of King Henry the Eighth* as 'a book which has been always characterised, by writers who have never read a line of it, as a master-piece of historic biography'.⁴⁶ Mill's contempt for Herbert's historical work seems to have derived from his distaste for Herbert's 'deistical tenets'. In addition to Mill's comment, some believed that Herbert was a eulogist for King Henry. Horace Walpole (1717-1797), who published Herbert's autobiography, regretted that he 'should have palliated the enormities of Henry VIII' and thought it 'strange, that writing a man's life should generally make the biographer

⁴² See the letter from Sir Henry Bourghier to James Ussher, 5 January 1624 in Charles Richard Elrington, *The Whole Works of the Most Rev. James Ussher, D.D., Lord Archbishop of Armagh, and Primate of All Ireland.: With a Life of the Author, and an Account of His Writings*, vol. 16 (Dublin: Hodges, Smith, and Co., 1864), 417-18.

⁴³ According to Aubrey, this was because Herbert expressed an indifferent attitude towards the sacrament. See John Aubrey, *Aubrey's Brief Lives*, ed. Oliver Lawson Dick (London: Secker and Warburg, 1950), 135.

⁴⁴ John Bruce and William Douglas Hamilton, eds., *Calendar of State Papers, Domestic Series, of the Reign of Charles I, 1625[-1649] Preserved in the State Paper Dept. of Her Majesty's Public Record Office*. (London: Longman, Brown, Green, Longmans, & Roberts, 1858), vols XLI, 494-495.

⁴⁵ *AB*, 158.

⁴⁶ Charles Mills, *History of Chivalry, or Knighthood and Its Times*, vol. 2 (London: Printed for Longmans, Hurst, Rees, Orme, Brown and Green, 1825), 148.

become enamoured of his subject'.⁴⁷ Similarly, James Granger (1723-1776) commented that Herbert 'has cast the monstrous vices of that merciless tyrant [King Henry VIII] into shade, and has displayed to great advantage, his gallantry, magnificence, and generosity'.⁴⁸

Modern scholarship exhibits a more positive attitude towards Herbert's historical works, but there exist only few or small-scale studies. Although still believing that Herbert's 'account of Henry VIII was eulogistic' and that Herbert wrote it intending to obtain a higher position at court, Margaret Bottrall noticed that Herbert exploited royal archives to complete the work.⁴⁹ Mario Rossi and W. Merchant, disagreeing with the previous view, thought that Herbert depicted Henry with irony and disliked him.⁵⁰ When introducing *The Life and Raigne of King Henry the Eighth*, Hill stated that 'the hasty or superficial reader will find such a book an apologetic narrative; the careful reader will notice the qualifying elements of irony and of deadpan ridicule'.⁵¹ In addition to those who only commented on and mentioned Herbert's historical works, E. E. Kimmelman's doctoral thesis investigated the construction and style of *The Expedition to the Isle of Rhe* and *The Life and Raigne of King Henry the Eighth*. She compared Herbert's historical writings with those of his predecessors and contemporaries, including Edward Hall (1497-1547), John Foxe (1448-1528), Francis Godwin (1562-1633), and Francis Bacon (1561-1626). She also argued that Herbert was a rationalist, in the sense that he sought for 'human and natural causes and effects [of history] without reference to a long-range providential scheme'.⁵² Christine

⁴⁷ Horace Walpole, *A Catalogue of the Royal and Noble Authors of England*, vol. 1 ([Twickenham]: Printed at Strawberry-Hill, 1758), 191.

⁴⁸ James Granger, *A Biographical History of England, from Egbert the Great to the Revolution*, vol. 3 (London: W. Baynes and Son, 1824), 146.

⁴⁹ Bottrall, *Every Man a Phoenix; Studies in Seventeenth-Century Autobiography*, 76-77.

⁵⁰ Merchant, 'Lord Herbert of Cherbury and Seventeenth-Century Historical Writing', 61. For Rossi's statement, I am indebted to Hill's work. See Hill, *Edward, Lord Herbert of Cherbury*, 58.

⁵¹ Hill, *Edward, Lord Herbert of Cherbury*, 51.

⁵² Kimmelman, 'Lord Herbert of Cherbury as Historian', 101, 146-56.

Jackson argued that by this work Herbert tried to disseminate his religious ideas and his comments on the religious reformations of the early sixteenth century.⁵³ Giving a positive evaluation on what Herbert achieved by *The Life and Raigne*, another article of Jackson's treated Herbert as a royal historian, and summarized Herbert's various topics and aspects of the reign of the King.⁵⁴ However, research on Herbert's historical works is still at an early stage. Key issues remain to be examined, such as Herbert's attitude towards King Henry and towards martyrs. Moreover, so far no study has been done on another short piece of Herbert's work, 'On the King's Supremacy in the Church', which he was commissioned to write by King Charles I.

Herbert's views on contemporary religious and political issues represent a topic that is well worth investigating, but that hitherto has not been carefully examined. This thesis focuses on Herbert's contribution to three such debates: those concerning the royal supremacy over the Church, the relationship between King and Parliament, and the lawfulness of resistance to tyrants. All three issues assumed fundamental significance during the later decades of Herbert's life. The royal supremacy formed not only the core tenet of the English Reformation instigated by King Henry VIII, but also the justification used by King Charles I to launch his Church reforms in the 1630s, while the Puritans argued that Charles abused it to create new doctrines and liturgies.⁵⁵ The relationship between King and Parliament deteriorated significantly during the reign of Charles I, especially once he embarked on his eleven-year personal rule after several fierce clashes with Parliament in the late 1620s. The development of this relationship also generated crucial constitutional issues, such as the nature and

⁵³ Christine Jackson, 'Lord Herbert of Cherbury and the Presentation of the Henrician Reformation in His Life and Raigne of King Henry the Eighth', *The Seventeenth Century* 28, no. 2 (2013): 139–161.

⁵⁴ Christine Jackson, "'It Is Impossible to Draw His Picture Well Who Hath Several Countenances": Lord Herbert of Cherbury and The Life and Raigne of King Henry the VIII', in *Henry VIII and History*, ed. Thomas Freeman and Thomas Betteridge (Ashgate, 2012), 135–48.

⁵⁵ See section 3.1 below.

limit of the King's prerogatives to levy non-parliamentary taxes, and the power of Parliament to prevent the King from abusing the law of the kingdom. The lawfulness of resistance to tyrants is the third core issue of this thesis. The issue of resistance came to prominence in the early 1640s, and was strongly contested by royalists and parliamentarians, since it was also a case of conscience or a moral dilemma for every subject. As a courtier and a member of the Short Parliament, Herbert was fully aware of the development of the relationship between Charles and Parliament, and witnessed the clashes between the King and his opposition, though most of the time he did not personally get involved. This thesis investigates his views on these important contemporary issues of religion and politics, mainly using his 'On the King's Supremacy in the Church', *The Life and Raigne of King Henry the Eighth*,⁵⁶ and his collections currently deposited in the National Library of Wales (catalogue reference code E5/3). Meanwhile, his other printed philosophical and religious works, private letters, and manuscripts are also considered. By doing so this thesis will not only balance modern scholarship's disproportionate attention to Herbert's religious thought, but also improve our understanding of Herbert's thought more generally, including its historical, religious, and philosophical aspects, and the interactions between the three.

By examining Herbert's views on contemporary issues of religion and politics, the thesis intends to show that these views reflected his belief in the freedom and authority of the individual's conscience. His discussion of these issues was united by a common thread: a concern that the individual conscience should be protected from the harm posed by worldly institutions and authorities. This thread connects Herbert's *De Veritate*, his religious treatises, *The Life and Raigne*, and manuscript collections concerning issues of religion and politics. This finding will supplement the argument

⁵⁶ Again, this includes three versions of *The Life and Raigne of King Henry the Eighth*: Jesus College Manuscripts 71-74, Ashmole 1143, and Bodleian 910.

proposed by those who have recently challenged Herbert's reputation as a deist, contending that Herbert's *De Veritate* and five religious common notions were eirenic in purpose and that they aimed to save people from the abuses of clergymen. While this argument is effective, it does not reach to the heart of Herbert's concerns: his preoccupation with individual conscience. As I will show below, Herbert aimed to save people's consciences from moral dilemmas derived not only from the authority of clergymen, but also from worldly authorities such as that of the king.

Chapter 2 investigates Herbert's theory of conscience and the similarities and differences between his theory and those of a group of contemporary writers on conscience, commonly known as the English casuists. It provides the essential understanding of Herbert's idea of conscience to the following chapters. The first section discusses the definition of conscience of the English casuists. Conscience is both a rational faculty receiving moral principles, and an intellectual faculty applying them to a particular case. The authority of conscience was higher than those of worldly institutions, since it is the deputy of God in the mind of every human being. Conscience is bound to obey the law of God, while it is required to obey human laws when they do not contradict the former. The second section presents Herbert's theory of conscience. Herbert agreed with the English casuists on several points, including the definition and the authority of conscience. However, Herbert prioritized the importance of common notions as the most reliable source of moral principles, while the English casuists had no such emphasis. In addition, Herbert particularly stressed that an individual should seek help from both the common notions and grace when having moral dilemmas, since he believed that the common notions and grace – or, universal providence and particular providence – help people to live moral lives and, in the end, lead them to salvation.

Chapter 3 investigates Herbert's view on the scope and limit of the king's power over the Church by examining his 'On the King's Supremacy in the Church' and *The Life and Raigne of King Henry the Eighth*. It first shows Herbert's justifications for supporting the royal supremacy against the papal supremacy, including the corruption of popes and the distance between England and Rome. Herbert's arguments match contemporary views, but the key point is that Herbert used his philosophical theory to justify them. The chapter then reveals that Herbert agreed with the contemporary view that supremacy was a jurisdictional, rather than a sacerdotal matter. However, he stressed the powers that kings should not claim. This distinguishes his view from those of his contemporaries. Moreover, he emphasized that neither kings nor clergymen had the power to change the foundation of religion, i.e. the religious common notions. The last section demonstrates that although Herbert generally supported the royal supremacy, he did not think the King had the right to execute those who refused to take the oath of allegiance on grounds of conscience. He particularly denounced the Six Articles enacted in 1539 as laws prejudicial to the liberty of conscience. In Herbert's view, therefore, conscience weighs more heavily than the royal supremacy, and this marks the limit of the king's power over the Church.

Having established in Chapter 3 that, in Herbert's view, the King held supreme but not unlimited power over the Church, in Chapter 4 the thesis examines his view on the relationship between King and Parliament, particularly the issue of whether the power of Parliament could check royal prerogatives. It argues that Herbert was interested in the history of Parliament and that he believed that Parliament had the authority to protect subjects' consciences from the oppressions of the unlawful commands of the King. By analysing his personal relationships, the first section shows that he shared with contemporary scholars and some members of the Commons

an interest in Parliament and its authority. The second section presents Herbert's strong concern for Parliament in his *The Life and Raigne of King Henry the Eighth*. Laws passed in Parliament held high authority, and opinions of Members of Parliament, including those opposed to the King's policies, received much respect from King Henry. In addition, that Herbert inserted his opinions in speeches of MPs indicated that these speeches had great value to Herbert. By analyzing Herbert's private collection deposited in the National Library of Wales, the third section reveals that he collected various manuscripts related to Parliament, including its records, proceedings, and resolutions and works on Parliament. Among these collections, a set of treatises on the antiquity of Parliament and various manuscripts on its authority strongly suggest that Herbert in principle agreed that Parliament held the highest sovereignty in the kingdom, and that it was Parliament's duty to protect people's consciences from the oppression of the unlawful commands of the King.

Chapter 5 focuses on the lawfulness of resistance to tyrants, a controversial issue which emerged in the early 1640s after the relationship between Charles I and Parliament continued to deteriorate. This chapter argues that Herbert agreed in principle that Parliament could lead the people to resist, and the resistance was lawful in point of conscience. The first section presents the answer the English casuists gave to this question. They all maintained that the people could disobey the unlawful command of a king, but by no means could they resist. The second section reveals both royalists' and parliamentarians' arguments and shows that Herbert's collections reflected the parliamentarians' key points. Like the English casuists, both royalists and parliamentarians used moral principles derived from nature, Scripture, and human laws, and both held that conscience held high authority. Both sides also agreed that the people could disobey the unlawful commands of a king, and that the King's abusing laws cannot justify the people's taking up arms. However, each side used

different interpretations of Scripture and laws of the kingdom to reach different conclusions on the case. The royalists held that the King is under God only, and that he is above the laws of the kingdom and the people; hence, the people could not resist. By contrast, the parliamentarians maintained that the King is under both God and the laws of the realm, that the king's power is limited, and that the safety of the people precedes the king's prerogatives. Presenting the parliamentarians' key arguments, Herbert's collections held that when the king became a tyrant, inferior magistrates or Parliament could lawfully lead the people to resist.

By focusing on hitherto neglected sources, namely Herbert's historical works and manuscripts in his private collections, Chapters 3, 4, and 5 demonstrate that Herbert's concern for the controversy of the royal supremacy, the relationship between the King and Parliament, and the issue of resistance to tyrants reflected a common preoccupation with the moral dilemmas suffered by subjects in his own time. His views on these issues also reflected his conviction that the authority of individual conscience was higher than those of worldly institutions and should be protected. These findings challenge the impression that the five religious common notions formed the most important part of Herbert's thought, and that the significance of his work is best understood in the intellectual context of the late seventeenth century and early eighteenth century – especially the development of anti-clerical and deistical thought. In fact, as this thesis will show, Herbert had a very close connection with developments in early seventeenth-century thought, and he was concerned with many important contemporary cases of conscience.

1.2 Herbert's collections of Religion and Politics in the National Library of Wales

Herbert's collections deposited at the National Library of Wales, in addition to his *The*

Life and Raigne of King Henry the Eighth and ‘On the King’s Supremacy in the Church’, provided crucial evidence of Herbert’s views on contemporary matters of religion and politics. Among these collections, modern scholars have hitherto examined and used manuscripts of Herbert’s autobiography (catalogue reference code E/1), religious treatises (E/2), verses (E/3), and some letters (E/4, E5/4, and E/6),⁵⁷ but they have omitted 49 items concerning King, Parliament and affairs of state (E/5/3).⁵⁸ Most of these items were unidentified manuscripts, and only Mario M. Rossi has paid attention to them and has provided his transcriptions of some manuscripts (E5/3/44, a part of E5/3/45, and E5/3/49) with his notes.⁵⁹ These sources deserve more attention partly because Herbert spent half of his life collecting them, and partly because they consist of a large portion of Herbert’s collections. This section will first provide a brief history of the provenance and circulation of Herbert’s collections, and then examine the origins and contents of six key manuscripts concerning contemporary issues of religion and politics. These sources will be further used in Chapters 4 and 5.

1.2.1 A brief history of Herbert’s collections

The history of Herbert’s collections can be traced back to the 1630s when he became a scholar and wrote the history of King Henry VIII. Herbert collected a large amount of printed works and private papers during this period and continued doing so until his death. Although the detailed history of their circulation is difficult to investigate, it is

⁵⁷ Julia Griffin, ‘Studies in the Literary Life of Edward, Lord Herbert of Cherbury.’ (University of Oxford, 1993); John Shuttleworth, ed., *The Life of Edward, First Lord Herbert of Cherbury* (London: Oxford University Press, 1976); W. J. Smith, ed., *Herbert Correspondence* (Cardiff: University of Wales Press, 1963); Wright, ‘An Unpublished Manuscript by Lord Herbert of Cherbury Entitled “Religio Laici”’.

⁵⁸ In addition to E5/3, E5/1 contains several scattered folios of *The Life and Raigne of King Henry the Eighth*, while E5/2 is a manuscript of *The Expedition to the Isle of Rhe*.

⁵⁹ Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, vols III, 492–504.

still possible to construct a general overview based on the surviving collections now kept in libraries around the world. Jesus College, Oxford, is the first library to have acquired a part of Herbert's collections: about 931 volumes – mainly in Greek and Latin – were bequeathed to it after Herbert's death.⁶⁰ These books were handed over to Dr. Chaunsell, head of Jesus College, under the supervision of John Selden and Sir Henry Herbert.⁶¹ Jesus College seems to be the only library that obtained a bequest from Herbert, and the remaining collections then became the family's heritage kept by his heirs. By the mid-eighteenth century, Herbert's heritage and collection belonged to Henry Arthur Herbert (1703-1772), who came from the Herbert family of Dolguog and was created Baron of Herbert of Cherbury in 1743. Five years later, he received the further title of Earl of Powis, which meant that he inherited all the heritage of the Herbert families (the Cherbury branch, the Powis Castle branch, and the Montgomery and Dolguog branch).⁶² Meanwhile, Herbert's collections were mixed with those of other family members. From this time till the mid-twentieth century, Powis Castle kept these collections and provided private access to readers such as Horace Walpole (1717-1797), who borrowed the manuscript of the autobiography of Edward Herbert from Henry Arthur Herbert,⁶³ and Mario M. Rossi, who analyzed and 'rearranged' the

⁶⁰ Peter Beal, *Index of English Literary Manuscripts. Vol.1, 1450-1625* (London: Mansell, 1980), 169.

⁶¹ See the letter from John Selden to Sir Henry Herbert, Nov. 1, 1648. Rebecca Warner, *Epistolary Curiosities: Series the First: Consisting of Unpublished Letters of the Seventeenth Century, Illustrative of the Herbert Family, and of the Reigns of James I., Charles I., Charles II., James II., and William III.* (Bath: Printed by R. Cruttwell, 1818), 39–40. There is a catalogue for these books, see Christian James Fordyce and Thomas Malcolm Knox, 'The Library of Jesus College, Oxford: With an Appendix on the Books Bequeathed Thereto by Lord Herbert of Cherbury', *Proceedings and Papers of the Oxford Bibliographical Society*, 1937, 75–115.

⁶² 'Herbert of Cherbury Manuscripts and Papers- National Library of Wales Archives and Manuscripts', accessed 16 March 2016, <https://archives.library.wales/index.php/herbert-of-cherbury-manuscripts-and-papers-2>.

⁶³ See the original dedication by Walpole to Henry Arthur Herbert. Edward Herbert, *The Life of Edward Lord Herbert of Cherbury, Written by Himself*, ed. Horace Walpole (Strawberry-Hill, 1764). According to James Granger (1723-1776), the first edition of Herbert's autobiography only had 200 copies, which were equally divided between Earl of Powis and Walpole. James Granger, *A Biographical History of England, from Egbert the Great to the Revolution*, vol. 3 (London: W. Baynes, 1824), 146.

collections in the 1940s.⁶⁴

In the twentieth century the Herbert family collections at Powis Castle started to be transferred to libraries around the world. The National Library of Wales acquired the lion's share. According to the information provided by its catalogue, it was Edward Robert Henry Herbert, the fifth Earl of Powis, who deposited them in 1956 and 1965, and since then these collections have been rearranged many times. The present catalogue shows that the Herbert family collections are divided into four groups,⁶⁵ among which Herbert of Cherbury's collection is the largest. In addition to the National Library of Wales' acquisition, the British Library and the National Archive of Kew collected some materials as well; the former owns some of Herbert's literary works (mainly in BL Add. MSS, Harley MSS, Sloane MSS and Egerton MSS),⁶⁶ and the latter acquired thirteen volumes of Herbert family papers and Herbert's correspondence and diplomatic papers.⁶⁷ Moreover, other libraries around the world obtained about 230 books of Herbert's collections from Powis Castle in various sales, notably at Sotheby's, on 16 January 1956 and 20 March 1967.⁶⁸

1.2.2 An analysis of Herbert's collections of religion and politics

⁶⁴ Beal, *Index of English Literary Manuscripts. Vol. I, 1450-1625*, 168. It is a pity that Beal did not state how Rossi rearranged them.

⁶⁵ They are: (1) Edward Herbert, first baron Herbert of Cherbury, manuscripts and papers, (2) Herbert family of Cherbury and Dolguog papers, (3) Herbert family of Powis Castle papers, and (4) miscellaneous political and literary papers.

⁶⁶ For the list of the Herbert collection in the British Library, please see *Index of Manuscripts in the British Library*, vol. 5 (Cambridge: Chadwyck-Healey, 1984), 245. And there is a very brief introduction of Herbert's letters of the Harley MSS, please see *A Catalogue of the Harleian Manuscripts in the British Museum*, vol. 1 (London: Printed by GEyre and AStrahan, 1808), 137 and vols. 2, 137.

⁶⁷ Beal, *Index of English Literary Manuscripts. Vol. I, 1450-1625*, 168. The list of libraries that owned Herbert's collections are, according to Beal, Cambridge University Library, the Huntington Library, Yale University Library, Trinity College Library (Dublin), St John's College Library (Cambridge), the Fitzwilliam Museum (Cambridge) and Harvard University Library. Herbert's collection in the National Archive of Kew could mainly be found by the shelf-mark PRO/30/53.

⁶⁸ Beal, 168; 'Herbert of Cherbury Manuscripts and Papers- National Library of Wales Archives and Manuscripts'.

Six manuscripts concerning matters of religion and politics will be introduced here before being used in Chapters 4 ('The Relationship between the King and Parliament') and 5 ('Conscience and Resistance in the Early English Civil War: 'Whether Conscience Grants that the People could Resist a Tyrant?'). They are: 'Of the Antiquity of Parliament' (E5/3/30), 'Arguments in Parliament Concerning the Liberty of the Subject' (E5/3/34), 'Discourse on the High Court of Parliament and the Authority of the Same' (E5/3/42), 'Account of 'ye present troubles'; and a Treatise on Obedience to Magistrates' (E5/3/44), 'Treatise on the Powers of King and Parliament' (E5/3/46), and 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5/3/49). Most of the manuscripts are copies transcribed from other works, the origins and authors of which are not specified. As mentioned, these manuscripts have barely been noticed by most modern scholars, with the notable exception of Mario M. Rossi, who published transcriptions of some of them with his notes, but still did not identify their origins.⁶⁹ A fresh transcription of these manuscripts is provided in the Appendix to this thesis. In this section, I will reveal the original works and their authors – except E5/3/44 and E5/3/42, since both manuscripts provide no clue for their authorship – and their main contents one by one. After this is done, I will disclose an additional manuscript in Herbert's collection 'Notes on the King, Parliament and the Civil War' (E5/3/45), which also touched the topic of Chapter 5, but its main argument, as I will show, was neither relevant nor contradictory to that of the same chapter.

Herbert's collection 'Of the Antiquity of Parliament' (E5/3/30) consists of 19 folios with five short treatises written in a professional secretary hand. Among these five treatises, four bear the name of their authors; they are Sir John Dodderidge [Doddridge] (1555-1628), Francis Tate (1560-1616), William Camden (1551-1623),

⁶⁹ Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, vols III, 492–504.

and Joseph Holland (d. 1605). The topic and the authors indicate the origin of this manuscript. It belongs to the works of the Society of Antiquaries, which thrived from 1590 to 1607 and was composed of many lawyers, scholars, and heralds. The members held conference from time to time and shared their papers with each other. Other manuscripts with the same content of ‘Of the Antiquity of Parliament’ have already been studied by Pauline Croft, who found out that this set of articles was widely circulated in early seventeenth century England and that they were likely composed between 1604 and 1605.⁷⁰ Thus, Herbert’s collection is obviously a copy. Although it is not certain at what time Herbert obtained this manuscript, it is reasonable to suppose that he might have owned a copy before the early 1630s for the following three reasons: because this set of articles had a large number of copies at that time, because Herbert was a colleague of Sir Robert Cotton (the fifth author of Herbert’s manuscript) in the Council of War,⁷¹ and because Herbert had access to royal libraries and Cotton’s Library when writing the history of King Henry VIII.⁷² Moreover, according to William Lewis, after Herbert left France, he was collecting the works of William Camden.⁷³

It seems, at first glance, that ‘Of the Antiquity of Parliament’ is a complete manuscript with its title and ending. However, a comparison of this manuscript with those published in 1658 and in 1771 reveals this not to be the case. Herbert’s version lacks two very short treatises, composed by an anonymous author and Arthur Agard

⁷⁰ Pauline Croft, ‘Sir John Dodderidge, King James I, and the Antiquity of Parliament’, *Parliaments, Estates and Representation* 12, no. 2 (1992): 99 and 104. The materials Croft used comes from Thomas Hearne, *A Collection of Curious Discourses* (W. and J. Richardson, 1771), 281–310. However, this set of articles was first published in 1658. See John Dodderidge, *The Several Opinions of Sundry Learned Antiquaries* (London: Printed for William Leake, 1658), 1–96.

⁷¹ William Douglas Hamilton, ed., *Calendar of State Papers, Domestic Series, of the Reign of Charles I* (London, Longman, Brown, Green, Longmans, & Roberts, 1858), vols XLI, 494.

⁷² Christine Jackson, ‘Lord Herbert of Cherbury and the Presentation of the Henrician Reformation in His Life and Raigne of King Henry the Eighth’, *Seventeenth Century* 28, no. 2 (2013): 144; Edward Herbert, *The Life of Edward Lord Herbert of Cherbury*, ed. Horace Walpole, 1826, 341–42.

⁷³ Herbert, *The Antient Religion of the Gentiles*, trans. William Lewis, ix.

(1540-1615) respectively. A possible explanation for this absence might be that their viewpoints were already covered and discussed by other authors. Herbert's manuscript also lacks the former part of Dodderidge's treatise, which implied the radical view that Parliament preceded the monarchy in history. This means that the copyist only transcribed the latter part of Sir John Dodderidge's treatise which introduced the composition of Parliament. It is tempting to think that Herbert might have asked the copyist not to transcribe the former part of Dodderidge's treatise because of its radical implications. However, this is unlikely to be the case: as I will show in Chapter 4, other manuscripts (E5/3/42 and E5/3/46) agreed that Parliament preceded the monarchy. It is more likely that both the original manuscript and Herbert's copy (E5/3/30) lack the former part of Dodderidge's treatise, since Dodderidge's treatise in E5/3/30 bears the title 'Of the Antiquity of Parliament' as others had and there is no page missing in this manuscript.

Treatises in 'Of the Antiquity of Parliament,' usually consisting of an introduction to the history of Parliament, its composition, and the duty of the King to attend it, argued that the history of Parliament could be traced back at least to the Saxons; only Dodderidge said that it was as long as human history.⁷⁴ Francis Tate, for instance, stated that the history of English Parliament was immemorial and that Parliament 'contynued here in the tyme of the Saxons, Danes, and Normans', while William Camden argued that institutions similar to Parliament existed 'before the Romanes arrival'.⁷⁵ In addition to their common argument, it is worth noting that Dodderidge's treatise presented an interesting point that the Commons were

⁷⁴ This idea was welcomed by Parliament in the late sixteenth century and became more prevalent afterwards. Meanwhile, the contrary view held by Arthur Hall of Grantham, that there was no Parliament before 1236, was suppressed by Parliament in 1581. See Croft, 'Sir John Doddridge, King James I, and the Antiquity of Parliament', 103.

⁷⁵ 'Of the Antiquity of Parliament' (National Library of Wales, n.d.), fols 8, 10. Also see John Dodderidge, *The Several Opinions of Sundry Learned Antiquaries*, 65–66, 74; Thomas Hearne, *A Collection of Curious Discourses*, 301, 303. The spelling I followed Herbert's collection.

indispensable when summoning a Parliament. Dodderidge said that ‘if the Comons doe not appeare, there can be noe Parliament though all the great peerres of the Parliament were present with the King; For the proctors, knightes, Cittizens and Burgesses of the Realme doe represent the whole’.⁷⁶ This point was so radical that it could be said to have implied the supremacy of the Commons over the Lords, which was later put into practice on 4 January 1649 when the Commons declared its absolute sovereignty and abolished the Lords.

Like ‘Of the Antiquity of Parliament’, ‘Arguments in Parliament Concerning the Liberty of the Subject’ (E5/3/34) was written in a professional secretary hand. As its given titles and times ‘1628 April 7–May 16’ suggest, it comes from the Parliamentary debate wherein the Commons resolved that the liberty of the subject should be protected. This resolution was a prelude to the Petition of Right and it was mainly against the king’s and his privy council’s unlawful taxation and imprisonment of subjects without showing cause. After the resolution was made, the Commons on the same day sent four people, including Sir Dudley Digges (1583-1639), Edward Littleton (1589-1645), John Selden (1584-1654), and Edward Coke (1552-1634), to hold a meeting with the Lords in order to persuade them to support their resolution.⁷⁷ Their speeches, published in 1642, were exactly the origin of this manuscript.⁷⁸ Although the surviving manuscript was incomplete since it only encompassed the addresses of Digges and Littleton, the final and separated page that came after the speeches of Selden and Coke suggests that the original manuscript, at least, included

⁷⁶ ‘Of the Antiquity of Parliament’, fol. 5. Also see John Dodderidge, *The Several Opinions of Sundry Learned Antiquaries*, 38; Thomas Hearne, *A Collection of Curious Discourses*, 292.

⁷⁷ Robert C Johnson et al., *Commons Debates, 1628*, vol. 2 (New Haven: Yale University Press, 1977), 332; John Rushworth, *Historical Collections Of Private Passages of State*, vol. 1 (London: D. Browne, 1721), 525–27; *The Parliamentary or Constitutional History of England*, vol. 7 (London: Printed; and sold by T. Osborne; and W. Sandby, 1751), 407–9.

⁷⁸ *A Conference Desired by the Lords and Had by a Committee of Both Houses, Concerning the Rights and Privileges of the Subjects* (London: Printed by AN. for Mathew Walbancke and Richard Best, 1642).

all the speeches of this meeting.⁷⁹ But it is doubtful whether it included the long debates which followed until 16 May, as the given title suggests.

‘Discourse on the High Court of Parliament and the Authority of the Same’ (E5/3/42), also written in a professional secretary hand, is a booklet consisting of 34 folios. The manuscript stated that it was extracted from some ‘good Authors,’ seven of whom were named in the manuscript.⁸⁰ Among these seven authors, Edward Coke was the most important since his work *Reports* (1572-1617) was widely cited throughout the manuscript, including the preface, 4th part, 7th part, 8th part, 9th part, 10th part, and 11th part.⁸¹ John Fortescue held the second place in importance, and his work *De laudibus legum Angliae* was often quoted as well. From this information we can conclude that the manuscript was completed no earlier than 1617, though it is most likely that it was composed during the early 1640s, as the following two paragraphs will indicate.

E5/3/42 argued that Parliament held the highest sovereignty and, meanwhile, that the King had no arbitrary power over the kingdom. The manuscript opens with the maxim ‘where noe Councell is, the people fall, but where many Councillors are, there is health’ (Proverbs 11:14), indicating that Parliament was the best means to preserve the public safety and tranquillity. It then discusses, in turn, the antiquity of Parliament (fol. 1v), the purpose or end of Parliament (fol. 2r), the process of summoning Parliament (fol. 2v-9v), the prerogative and duty of the members and their attendants and servants of Parliament (fol. 10r, 13v, 15r-15v), the places and sittings in

⁷⁹ The content of this manuscript includes the following pages of the printed version which is a 91-pages book. See Ibid., 1-12, 16-21, 72.

⁸⁰ The seven authors are Edward Coke (1552-1634), John Davis (1550-1605), John Fortescue (c. 1397-1479), Edmund Plowden (1518-1585), Thomas Egerton (1540-1617), Christopher Brooke (c. 1570-1628), and Henry de Bracton (1210-1268).

⁸¹ Edward Coke, *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard, 3 vols. (Indianapolis: Liberty Fund, 2003).

Parliament (fol. 17r-22v),⁸² the power of the Lords to examine the error of the King's Bench (fol. 24r), the process of enacting a law (fol. 25r-26r), the King's prerogative and Parliament as the highest court (fol. 27v-32r).

E5/3/42 is likely to have been composed during the early 1640s when King Charles and the Long Parliament were contending for the kingdom's sovereignty. It claims that Parliament, not the King, held the sovereignty on three grounds. The first point was that Parliament originated in the time of the Saxons – echoing the main theme of manuscript E5/3/30. Moreover, E5/3/42 claims that Parliament's jurisdictional power remained unchanged after William the Conqueror ascended the throne as the King of England. This point showed that the antiquity of Parliament was greater than that of the Crown. The second point argued that the King and the clergymen were summoned to Parliament,⁸³ implying that the King was only a part of Parliament and that it was not the King who created Parliament. The third point was cited from the statement of John Fortescue that the 'acte of Parliam[en]t and statute in England are not made only by the Prince pleasure but alsoe by the assent of the whole Realme'.⁸⁴ The anonymous author said that the King had his prerogative, such as summoning Parliament and Convocation and remitting the penalty of a subject by proclamations,⁸⁵ but that the King's prerogative was 'Royall only and not pollitique over his subiectes'.⁸⁶ The King's prerogative was not unlimited, and actions such as confiscating and forfeiting the property and land of a subject could 'only [be done] by authority of this high Courte of Parliament'.⁸⁷

Among the three remaining manuscripts, I will discuss 'Treatise on the Powers

⁸² These included Vicegerent, King's heir and successors, Archbishop of Canterbury, other Bishops, Lord Chancellor, Lord Treasurer, Lord President, Lord Privy Seal, Lord Constable, Lord Marshal, Lord Admiral, and Lord Steward.

⁸³ 'Discourse on the High Court of Parliament and the Authority of the Same', fol. 27v.

⁸⁴ Ibid., fol. 10r.

⁸⁵ Ibid., fol. 32r.

⁸⁶ Ibid., fol. 32r.

⁸⁷ Ibid., fol. 30r.

of King and Parliament' (E5/3/46) first since it focuses on the very core of the conflict of the English Civil War – who, the King or Parliament, has the highest sovereignty in the kingdom? Then the discussion will shift to 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5/3/49) and 'Account of 'ye present troubles'; and a Treatise on Obedience to Magistrates' (E5/3/44). Both of these manuscripts focus on a secondary but still a very crucial controversy during the civil war: whether subjects or Parliament could lawfully resist a tyrant.

'Treatise on the Powers of King and Parliament' (E5/3/46) is an incomplete work that contains eight folios without its title and ending. Some pages may be missing since the contents of folios 4v and 5r do not match. Moreover, it is doubtful that the order of these folios is correct since the first word of folio 1r is the same as the last word of the last page. After analyzing the content, I determined that this manuscript comes from *The Sovereigne Power of Parliaments and Kingdomes* (1643) by William Prynne (1600-1669), who was an MP and a well-known propagandist of the Long Parliament. After comparing the manuscript to the published version, I am certain that the order of this manuscript is incorrect.⁸⁸ Starting from 'allay, abolish, and resume...', folio 5r should be the first folio. The last folio, then, should be folio 4v, which starts from 'Royall assent is simply necessary...'.⁸⁹ When read in this order, the content of this manuscript becomes more coherent.

After confirming the folio order, the next step is to analyze how and what the copyist (I believe he is Herbert, as I will explain after the discussion of E5/3/44)

⁸⁸ William Prynne, *The Treachery and Disloyalty of Papists to Their Soveraignes: Together with the First Part of the Sovereigne Power of Parliaments and Kingdomes* (London: Printed for Michael Sparke, senior, 1643). This book was first published on 28 March 1643, and what I refer to here is the enlarged second edition published in May 1643. Its title, thus, is slightly different from that of the first edition. I use the second edition because the printing errors are fewer, and because it encompassed the whole content of Herbert's manuscript (E5/3/46). In the following, I refer this work as *The Sovereigne Power of Parliaments and Kingdomes*, its most familiar title.

⁸⁹ But I will still follow the original order when I cite it in order to let readers have quick and easy access to it.

transcribed from Prynne's work. The surviving manuscript was, in fact, a copy transcribed from the first part of *The Sovereigne Power of Parliaments and Kingdomes*, from page 40 till page 105. It was transcribed by skipping most of the historical illustrations and only writing down the points of principle and fundamentals.⁹⁰ However, the scope of the original manuscript is very likely to be larger than this range (from page 40 to 105) since what we see today is a surviving manuscript. Some folios transcribing the contents before that of 5r – i.e. Prynne's work from pages 1 to 40 – and after that of 4v – i.e. Prynne's work from page 106 to 112 – may be missing since the first folio 5r starts in the middle of a sentence and the last folio 4v ends in the same manner. In brief, originally 'Treatise on the Powers of King and Parliament' must have been a complete work, though only eight folios presently survive. This conjecture is supported by internal evidence. After a more detailed study of Prynne's work, I found out that the point made on page 40 ('the whole kingdome in Parliament, may not onely augment, but likewise abridge, allay, abolish, and resume some branches of the Kings royall power and prerogative...') is the fourth point of the proposition on page 33 ('the High Court of Parliament, and whole kingdome which it represents, may in diverse respects be truly and properly said, to be the Highest Sovereigne power of all others, and above the King himselfe'). This proposition is the third one used to answer the challenge raised on page 5 (the royalists' accusation that Parliament 'trayterously invaded the Kings Prerogatives'). This finding means that the copyist must have also transcribed the question and propositions from page 1 to 39 before he transcribed the points in page 40; otherwise, the transcription would commence in the middle of a sentence and with a subordinate point. Likewise, it is very probable that the original manuscript continued until the

⁹⁰ For instance, the copyist skipped all the examples in the English history of Parliament disposing the crown. Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 79–85.

very end of the first part of Prynne's work. The surviving manuscript stops in the middle of a sentence when transcribing the fourteenth point in page 105, but the remaining pages from 106 to 112 belong to the same point. To sum up, the original manuscript must have encompassed the whole first part of Prynne's work.

However, it is doubtful whether the original manuscript encompassed the second, the third, and the fourth parts of *The Sovereigne Power of Parliaments and Kingdomes*, since the remaining folios do not include any content transcribed from these later parts. Moreover, although Prynne's work was often published as one book with four parts, the publication date of each part varied, and each of them was published many times separately during the Civil War. Herbert was also likely to have been more interested in the first part of Prynne's work – the theoretical discourses on Parliament's sovereignty over the crown – than the remaining parts, which were detailed justifications of the Militia Ordinance and of several radical powers and privileges of Parliament including imprisoning and restraining 'malignants' without the King's consent. This supposition is based on the following reason. From Herbert's philosophical works we know that he sought to avoid commenting on specific controversial issues. He wrote *De Veritate* with the aim 'not of arousing controversy, but of closing it',⁹¹ and his *De Religione Laici* shows that it is impossible to know every controversy around the world.⁹² Thus, it is probable that Herbert was more interested in Prynne's theoretical points, than in their radical applications set out in the later parts.

The main theme of *The Sovereigne Power of Parliaments and Kingdomes* is that Parliament is 'the Highest Sovereigne power of all others, and above the King

⁹¹ *DV*, 74.

⁹² *DRL*, 103, 109.

himself'.⁹³ It was composed at a time when the central consensus on the principle of King-in-Parliament could not be maintained.⁹⁴ Representing the Long Parliament's stance, Prynne's treatise was one of the classical works during the Civil War not only because it favoured Parliament's power over the King's in principle but also because it justified Parliament in taking up arms against the King and assuming executive powers.⁹⁵

The remaining two manuscripts – 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5/3/49) and 'Account of 'ye present troubles'; and a Treatise on Obedience to Magistrates' (E5/3/44) – focus on the question of resistance to tyrants. The former manuscript contains only two sheets and presents five questions and their answers. The latter was written in six sheets incorporating two separate treatises: the first is 'A Short Narration of Occurrences in the Kingdome of Scotland, and of the Present Troubles, Together with Their Causes, and Progression' (folios 1r-2v) and the other is titled 'Questions Touching upon Obedience to Magistrates in Eminency' (folios 3r-6r). Both manuscripts were written in secretary hand with numerous difficult contractions. Mario M. Rossi provided transcriptions in the Appendix of his work, but did not provide more detailed explanations.⁹⁶ Besides, it also appears that the second sheet of the second

⁹³ The structure of the first part of *The Sovereigne Power of Parliaments and Kingdomes* is as follows. Prynne first presented the royalists' challenge that Parliament encroached on the King's power on levying taxes, jurisdiction, and his legislative power. (Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 5.) Then he answered with two main arguments. First, what the Long Parliament did was not an invention, and it did not infringe upon the King's power. According to Prynne, it was papists, not Parliament, who had 'sent out Writs and summoned Parliaments in the Kings name, and forced the King to call a Parliament without and against his full consent.' (Prynne, 9–32.) Secondly, Parliament is above the King since it represents the kingdom. This proposition was supported by seven points and the seventh point was supported by a further fourteen points. (Prynne, 33–112.)

⁹⁴ David L. Smith, *The Stuart Parliaments, 1603-1689* (London; New York; New York: Arnold; Co-published in the U.S.A. by Oxford University Press, 1999), 129–31. Jeffrey Denys Goldsworthy, *The Sovereignty of Parliament History and Philosophy* (Oxford: Clarendon, 2001), 78–141.

⁹⁵ For more detailed arguments from Prynne, see section 3 of chapter 4.

⁹⁶ Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, vols III, 492–499.

manuscript (E5/3/44) has been erroneously replaced by another;⁹⁷ the content of the first page does not match with the second, and the content of the second is different from that transcribed by Rossi in the 1940s. However, this issue will not affect the discussions in Chapters 4 and 5 since both chapters' focuses have little relationship with the content of 'A Short Narration of Occurrences in the Kingdome of Scotland, and of the Present Troubles, Together with Their Causes, and Progression'. Hence, my analysis in the following paragraphs will focus on 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5/3/49) and 'Questions Touching upon Obedience to Magistrates in Eminency' (the latter part of E5/3/44).

After transcribing 'Treatise on the Royal Prerogative' (E5/3/49), I found out that it originates from *The Glorious Name of God, the Lord of Hosts* (1643) by Jeremiah Burroughs (1600-1646), an Independent minister. Having been suspended and deprived of his living in 1636 and 1637 respectively for refusing to accept the new rituals of Laudianism and the Book of Sports, Burroughs moved to the Netherlands until the Long Parliament gained control.⁹⁸ It was when he came back to England that he published *The Glorious Name of God, the Lord of Hosts* with the permission and support of the Long Parliament.

At first glance, 'Treatise on the Royal Prerogative' seems to be an incomplete manuscript since it only contains five questions with answers. The content of the manuscript shows that the copyist transcribed from page 27 to page 35, focusing on the dialogue about whether the people or Parliament could resist a tyrant. Moreover, this manuscript heavily condensed Burroughs' sentences and skipped all his biblical

⁹⁷ The date of my access to these manuscripts was September 2015.

⁹⁸ James Reid, *Memoirs of the Lives and Writings of Those Eminent Divines*, vol. 1 (Paisley: Printed by Stephen and Andrew Young, 1811), 155–56. Burroughs published *Irenicum* (1646) in his later years, attempting to 'heal divisions among Christians'. This work might share the same motivation with Herbert's religious works, but so far there is no further evidence showing any connection between Herbert and Burroughs.

illustrations. However, I argue that even with these five questions with answers only, it could be a complete manuscript when we consider further how the copyist transcribed Burroughs' work. It was likely that discussions other than these five questions were not transcribed simply because they did not directly touch the topic – resisting a tyrant. Moreover, when we consider the fact that these five questions were transcribed perfectly with openings and endings (the ending of the last answer finished in the middle of the last page), we may reasonably say that the original manuscript may encompass these five questions only, and nothing more.

'Treatise on the Royal Prerogative' aimed to justify the Long Parliament's resistance to King Charles with three main arguments. The first point claimed that the resistance was not against the King, but was 'defensive onely, to defend our lawfull liberties, our estates, which we inherit as truly as the King inherits any thing he hath'.⁹⁹ Moreover, the resistance aimed also to preserve the King's safety and his power from evil counsellors.¹⁰⁰ The second main point argued that the Long Parliament was resisting the personal command of the King, not the authority of the King. As Burroughs stated, the resistance was 'not against the King, being onely against his personall Co[mma]nd, not his legall power'.¹⁰¹ The third main point, echoing E5/3/46, stated that Parliament, not the King, held the sovereignty, since Parliament was the highest court in the kingdom and the place where the last appeal

⁹⁹ Jeremiah Burroughs, *The Glorious Name of God, the Lord of Hosts* (London: Printed for RDawlman, 1643), 27–28; 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (National Library of Wales, n.d.), fol. 1r. Prynne also had the same opinion. See Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 112. It is worth noting that both sides claimed to act defensively. See Michael J. Braddick, 'History, Liberty, Reformation and the Cause: Parliamentary Military and Ideological Escalation in 1643', in *The Experience of Revolution in Stuart Britain and Ireland*, ed. David L Smith and Michael J. Braddick (Cambridge University Press, 2011), 117.

¹⁰⁰ 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 1r; Burroughs, *The Glorious Name of God, the Lord of Hosts*, 28. As I have noted before, the copyist shortened Burroughs' sentences; thus, in order to stay close to the text to which Herbert had access, the sentences cited here come from the manuscript not the printed version.

¹⁰¹ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 28.

was to be made.¹⁰²

The origin of 'Account of 'ye present troubles'; and a Treatise on Obedience to Magistrates' (E5/3/44) remains obscure. It may have been written during the Civil War since the handwriting is the same as 'Treatise on the Royal Prerogative' (E5/3/49). The first short treatise of this manuscript, 'A Short Narration of Occurrences in the Kingdome of Scotland, and of the Present Troubles, Together with their Causes, and Progression', likely describes the revolt in Scotland in 1639 when Herbert headed north to join the King. The second treatise, 'Questions Touching upon Obedience to Magistrates in Eminency', is on the same topic as 'Treatise on the Royal Prerogative'. It ends with the following words: 'Read Bp[Bishop] Bilson of the true difference between Xian[Christian] subiection, and unxian[unchristian] Rebellion the 3^d p^t...'. This clue shows its connection with *The True Difference Betweene Christian Subiection and Unchristian Rebellion* (1586) by Thomas Bilson (1547-1616).¹⁰³

'Questions Touching upon Obedience to Magistrates in Eminency' seems to be not a transcription of Bilson's published treatise, however, but a reflection or a new work composed after reading it. Three pieces of evidence were found by comparing the manuscript with Bilson's treatise. The first piece of evidence is their dissimilar lengths. Bilson's treatise contains up to fifty-nine pages of discussion on the topic of resistance to tyrants, while 'Questions Touching upon Obedience to Magistrates in Eminency' contains only four folios.¹⁰⁴ Numerous dialogues were used in Bilson's treatise, whereas only six questions with their answers are presented in the manuscript.

¹⁰² Burroughs, *The Glorious Name of God, the Lord of Hosts*, 30–31; 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 1v. CF: 'The Courts or person to whom the last appeale is to be made, is the Supreamest power'. Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 93; 'Treatise on the Powers of King and Parliament' (National Library of Wales, n.d.), fol. 3v.

¹⁰³ Thomas Bilson, *The True Difference Betweene Christian Subiection and Unchristian Rebellion* (London: Imprinted by Iohn Iackson and Edmund Bollifant, 1586).

¹⁰⁴ Bilson, 255–313. 'Account of "Ye Present Troubles"; and a Treatise on Obedience to Magistrates' (National Library of Wales, n.d.), fols 3r-6r. Henceforth cited as 'A Treatise on Obedience to Magistrates'.

It is impossible to condense all the points of Bilson's treatise into six questions. The second piece of evidence is their different context. Bilson's treatise was composed of countless debates between Theophilus the Christian and Philander the Jesuit. Bilson wrote it with an eye to defend the power of the King and the Anglican Church against the intervention of the Roman Catholic Church, which claimed that the Pope could depose the King and that the people could resist and assassinate the King.¹⁰⁵ 'Questions Touching upon Obedience to Magistrates in Eminency', in contrast, stands not in the context of Bilson's treatise, but focuses only on the question of whether a tyrant could be resisted. The third piece of evidence is their different presentation. Although the points of Bilson's treatise and those of the manuscript are similar, their wording varies greatly and a crucial illustration of the manuscript – the biblical case of David resisting Saul – could not be found in the third part of Bilson's treatise.¹⁰⁶ These three pieces of evidence indicate that the manuscript is likely to be a new work, not merely a transcription or an abstract of Bilson's treatise (a more detailed comparison will be presented in the following paragraphs).

It seems not to be a coincidence that Herbert had access to Bilson's *The True Difference Betweene Christian Subiection and Unchristian Rebellion*. Bilson argued that subjects could resist a tyrant under some conditions, an argument that during the civil war soon drew the attention of those who favoured parliamentary sovereignty. Extracted from pages 279 to 280 of Bilson's treatise, a selected piece of Bilson's argument was first published in 1641 and again in 1643.¹⁰⁷ This piece of information

¹⁰⁵ William Richardson, 'Bilson, Thomas (1546/7–1616)', *The Oxford Dictionary of National Biography*, accessed 22 April 2016, <http://www.oxforddnb.com/view/article/2401>.

¹⁰⁶ 'A Treatise on Obedience to Magistrates', fols 4v-5r.

¹⁰⁷ For the 1641 edition, see Sir Walter Scott, *A Collection of Scarce and Valuable Tracts, on the Most Interesting and Entertaining Subjects: Reign of King Charles I*, vol. 4 (Printed for T. Cadell, W. Davies, 1810), 29–30. For the 1643 edition, see Thomas Bilson, *A Discourse upon Questions in Debate between the King and Parliament. With Certaine Observations Collected out of a Treatise Called, The Diffrence between Christian Subjection, and Unchristian Rebellion*. (London, [publisher not identified], 1643).

indicates that Herbert might have composed ‘Questions Touching upon Obedience to Magistrates in Eminency’ when Bilson’s treatise was revived. Although it remains unknown which edition(s) of Bilson’s work Herbert was acquainted with, this question does not carry too much weight for our discussion since the content of the 1641 and 1643 editions encompassed the whole argument that the English Parliament, representing the whole kingdom, had the power to resist a tyrant under some conditions.¹⁰⁸

This manuscript E5/3/44 shows three main points. The first point confirms the established proposition that under no circumstances could private men take up arms against their princes.¹⁰⁹ As the manuscript states, even though ‘Princes become Tyrants’, ‘no Private Person is warranted to lay his Hand upon the Lords anointed or to make Publique talke of his faults’.¹¹⁰ The second point, however, justifies the resistance to a tyrant under some conditions. Although private men are not entitled to resist a tyrant, ‘the nobles and peeres of a state’ have the power to do so. ‘Though one may not lay hands upon the Lords anointed’, the author wrote, ‘yet one may hold a mad mans hand’.¹¹¹ Moreover, the nobles and peers could lawfully resist a tyrant since they ‘were standing as Protectors and defenders of the just Rights of a kingdom, and professing onely to keepe the King in his duty whether hee goes about and resolves to depopulate the states by insufferable Anarchie’.¹¹² When resisting a tyrant, the nobles and peers ‘serve not the king, but the Crowne, and Countrey’.¹¹³ But it is

¹⁰⁸ The third part of Bilson’s treatise contains 313 pages. Except pages 279 to 289, other pages deal mainly with the attacks and doubts of Philander the Jesuite and most of the cases discussed focus on the idea that there is neither religious nor political justification for resisting either a king or a tyrant.

¹⁰⁹ ‘Private man’ here means a person who is not a noble or a peer of the state.

¹¹⁰ ‘A Treatise on Obedience to Magistrates’, fol. 3r.

¹¹¹ Ibid., fol. 3v. I am indebted to Dr. Felicity Green for helping me decipher this sentence. Rossi had different transcription here: ‘though we may not lay hands upon the Lords anointed, yet one may held away mans hand.’ Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, vol. III, 493. But I am afraid the phrase ‘held away mans hand’ did not have much sense in this context.

¹¹² ‘A Treatise on Obedience to Magistrates’, fol. 5r.

¹¹³ Ibid., fol. 4r.

worth noting here that this point does not justify the execution of a tyrant or a king as the Long Parliament did in 1649. The author stressed that ‘the Princes at first must moderately bee resisted’.¹¹⁴ And if ‘this mild remedy’ could not stop the tyranny, the nobles and peers could apply more extreme measures against their prince; at that time, they ‘may dethrone him’ when he infringes ‘his oath taken at his coronation’ and the ‘covenante between him, and his Vassalle must bee lost into’.¹¹⁵ Thus, a stubborn tyrant should not be tried and executed by the nobles: ‘may hee as Saul fall upon his owne sword (1 Samuel 31:4)’.¹¹⁶ This statement implied that only God could punish princes, whereas the nobles could only stop his tyranny. The third point of the manuscript shows that the King could not act arbitrarily but should protect the people’s well-being. ‘The Law of God, and Nature teacheth that being now the father of the K[ing]dom, hee is not to waste his childrens Inheritance, indeed the peoples right, but to preserve and upheld it,’ the author said.¹¹⁷ After presenting this argument, the author gave a more striking statement that ‘for heere the people are more antient then the King; and for the people were kings ordained’.¹¹⁸ These three points basically fit the arguments of the moderate Parliamentarians: the Long Parliament could lawfully resist King Charles I, but they could not execute the King.¹¹⁹

The three main points of ‘Questions Touching upon Obedience to Magistrates in Eminency’ echoed the contents of Bilson’s treatise, but the manuscript should be considered a new work, not a transcription, because of the differences in wording. The

¹¹⁴ Ibid., fols. 3r-3v.

¹¹⁵ ‘A Treatise on Obedience to Magistrates’, fol. 3v.

¹¹⁶ Ibid.

¹¹⁷ Ibid., fol. 5v. CF: Rossi’s transcription: ‘The law of God, & Nature teacheth that being now the father of the Kdome, hee is not to waste his childrens Inheritance, that is the popular right, but to preserve & enforce it’. Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, 495.

¹¹⁸ ‘A Treatise on Obedience to Magistrates’, fol. 5v.

¹¹⁹ Even though Parliament won the civil war, most of the Parliamentarians – not pamphleteers who doubted the need of a king – still sought for a settlement with the King before the Army decided to intervene. Patricia Crawford, ‘Charles Stuart, That Man of Blood’, *Journal of British Studies* 16, no. 2 (1977): 41.

first point that under no circumstance could private men resist their princes was emphasized and repeated many times in Bilson's treatise. When commenting on pagans resisting their prince, Bilson wrote that 'They [pagans] had murdering of tyrants, which God hath prohibited to all Christians toward priuate men',¹²⁰ and that 'priuate men may disobey a wicked prince but not beare armes against him'.¹²¹ Facing the tyranny of their princes, 'the [Christian] subiect hath no refuge against his soueraigne, but only to God by praier and patience'.¹²² Likewise, the second point of the manuscript fitted the content of Bilson's treatise, and it was also encompassed in the 1641 and 1643 editions. After maintaining that Protestant doctrines did not allow subjects to resist their prince, Bilson then presented an exception by saying that 'Cases may fall out even in Christian kingdoms, where the people may plead their right against the prince, and not be charged with rebellion'.¹²³ Bilson then made a further explanation that 'the nobles and commons' could 'joyne together to defend their ancient and accustomed liberty, regiment and laws' if their prince 'should goe about to subject his kingdome to a foraigne realme, or change the forme of the common-wealth from impery to tyranny, or neglect the laws established by common consent of prince and people to execute his owne pleasure'.¹²⁴ Moreover, both the manuscript and Bilson's treatise applied the same justification of the nobles and peers resisting their prince: 'the laws of the land appoint the nobles as next to the king to assist him in doing right, and withhold him from doing wrong, then they be licensed

¹²⁰ Bilson, *The True Difference Betweene Christian Subiection and Unchristian Rebellion*, 260.

¹²¹ Ibid., 268. CF: 'God neuer required the people to displace their king, but not to consent to his wickedness'. Ibid., 271.

¹²² Ibid., 262. CF: 'priuate men, they must hold great difference between doing and suffering wrong...neither is there here proposed any other remedy for priuate men that are vnder a tyrant, but the amending of their liues, and therewithal praier and tears'. Ibid., 268.

¹²³ Scott, *A Collection of Scarce and Valuable Tracts*, 4:30; Bilson, *The True Difference Betweene Christian Subiection and Unchristian Rebellion*, 279–80; Bilson, *A Discourse upon Questions in Debate between the King and Parliament. With Certaine Observations Collected out of a Treatise Called, The Diffrence between Christian Subjection, and Unchristian Rebellion.*, 15–16.

¹²⁴ Bilson, *The True Difference Betweene Christian Subiection and Unchristian Rebellion*, 279–280.

by mans law, and so not prohibited by Gods to interpose themselves for the safe-guard of equity and innocence; and by all lawfull and needful meanes to procure the prince to be reformed'.¹²⁵ In brief, according to Bilson, the nobles and peers may resist a tyrant for saving the kingdom and the crown, an assertion that matches the second statement of the manuscript.

However, in addition to their different wordings and expression, the manuscript applied three additional biblical illustrations (1 Samuel 14:45, 2 Kings 9:34, and 1 Samuel 25:21) to support its argument when presenting its second point – among which Bilson's treatise touched only one illustration in a different context.¹²⁶ This could be a simple but a crucial piece of evidence that the manuscript was not a transcription of Bilson's treatise but a new work. Bilson's treatise also agreed with the third point of the manuscript that the King could not act arbitrarily. The princes, said Bilson, could not infringe 'the foundation, freedome, and forme of their common-wealth, which they [the people] foreprized when they first consented to have a king'.¹²⁷ The commonwealth and its law were superior to the princes, according to

¹²⁵ Ibid., 280.

¹²⁶ 'A Treatise on Obedience to Magistrates', 3v-5r. The first illustration was the case 'betweenes Saul and Jonathan, where the people delivered the good sonne out of the bad fathers hands'; it was mentioned by Bilson in his treatise, but not when he justified the resistance of a tyrant under some extraordinary conditions. See Bilson, *The True Difference Betweene Christian Subiection and Unchristian Rebellion*, 271. The second illustration was the depiction of Jezebel. Even though she was an evil person, she 'was honourable because she was a king's daughter'. The third illustration was the case between David and Saul, which was widely cited and discussed during the civil war. Burroughs, for instance, mentioned this case in his work (see Burroughs, *The Glorious Name of God, the Lord of Hosts*, 38–39). However, this case could not be used to justify Parliament in resisting the King, according to Henry Ferne. Representing the royalist party, Ferne said that David was entitled to resist Saul 'for he was anointed and designed by the Lord to succeed Saul, and therefore he might use an extraordinary way of safeguarding his person' (see Henry Ferne, *The Resolving of Conscience upon This Question: Whether upon Such a Supposition or Case, as Is Now Usually Made, [That] the King Will Not Discharge His Trust but Is Bent or Seduced to Subvert Religion, Lawes and Liberties, Subjects May Take up Arms and Resist? And Whether That Case Be Now?* [Cambridge: Printed by Edward Freeman and Thomas Dunster, 1642], 5). In order to refute Ferne's point, Burroughs chose to reinterpret not this case but the meaning of anointing. Burroughs maintained that anointing was not the king's prerogative. The Bible shows that churches, priests, prophets, magistrates, and captains could be anointed too, said Burroughs; furthermore, 'the Anointing here is apparently meant of the people of God, of the Church, of the Saints...and Kings should not touch people that are Gods Anointed' (Burroughs, *The Glorious Name of God, the Lord of Hosts*, 36–38).

¹²⁷ CF: 'I never said that kingdoms and common-wealths might not proportion their states as they thought best, by their publique laws, which afterwards the princes themselves may not violate'. Ibid.,

him. However, Bilson's statement still had some slight but crucial differences compared to the manuscript when presenting the third point. The manuscript stressed 'the Antient Nature of People' by saying that 'the people are more antient then the King; and for the people were kings ordained'; this strong statement was not present in the third part of Bilson's treatise.

Following the former discussion, I intend to argue that 'Questions Touching upon Obedience to Magistrates in Eminency' is likely to be a work by Herbert and that both 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5/3/49) and 'Treatise on the Powers of King and Parliament' (E5/3/46) might have been transcribed by the same person. First, a crucial piece of evidence is the handwriting. Among the collections of the British Library there are two autograph drafts by Herbert; one is a draft of *De Veritate* (British Library, Add. MS 7081) dated '20 Julij 1619 EHerbert, on 126 folio leaves' while the other is an unfinished or incomplete work *The Amazon* (British Library, Add. MS 88926).¹²⁸ After seeing these manuscripts, I am of the opinion that their handwriting bears much resemblance to E5/3/44, E5/3/49, and E5/3/46; thus they might have been of Herbert's own hand as well.¹²⁹ However, like Herbert's signature,¹³⁰ the style of his handwriting might vary. The handwriting of Herbert in the earliest version of *The Life and Raigne of King Henry the Eighth* (Jesus College Manuscript 71-73) looks more beautiful and neat.¹³¹

38.

¹²⁸ Beal, *Index of English Literary Manuscripts. Vol.1, 1450-1625*, 181. Peter Beal, 'CELM: Edward, Lord Herbert of Cherbury (1582?-1648)', accessed 10 April 2016, http://www.celm-ms.org.uk/authors/herbertedwardofcherbury.html#bodleian_id566782.

¹²⁹ I accessed the manuscripts of *De Veritate* and *The Amazon* in March 2016. Some photographic evidences of E5/3/44, E5/3/46, and E5/3/49 can be seen in my Appendix, while it is a pity that collections in the British Library are prohibited to have any photographic copy.

¹³⁰ I found three kinds of signature of Herbert. One is a capital 'H'. See Herbert's collection deposited in the National Library of Wales: Robert Cotton, 'Treatise on the Exercise of Supreme Power by Diverse Princes' (National Library of Wales, n.d.), fol. 2. Another is his family name 'Herbert'. See British Library, Add. MS 7081. Another is composed of two lowercase of 'ed' with curved tail. See British Library, Sloane 3957 (another draft of *De Veritate* dated 15 December 1622, in 232 folio leaves and with autograph revisions.).

¹³¹ There were three to four hands in these manuscripts, according to Beal. And Herbert's hand is

In addition to this evidence, there is also the internal evidence of the way the manuscripts were transcribed. Numerous sentences of E5/3/49 and E5/3/46 were condensed by the copyist and many illustrations and paragraphs were omitted; this shows that the copyist must have been a scholar who was very familiar with these controversies. After considering the above-mentioned evidence, it is probable that the copyist and the author of E5/3/44 is Herbert himself.

In addition to the above six manuscripts, ‘Notes on the King, Parliament and the Civil War’ (E5/3/45) also focuses on contemporary matters of politics. However, its main argument – that the English Civil War would definitely not bring well-being to the Common Wealth – is neither closely related to the topic of Chapter 5 (Conscience and Resistance in the Early English Civil War: ‘Whether Conscience Grants that the People could Resist a Tyrant?’), nor does it contradict its arguments.¹³² E5/3/45, being an incomplete manuscript written in two booklets and of uncertain origin,¹³³ presented the main concern of a ‘moderator’ who intended to persuade both sides against taking up arms in the Civil War. As the author in the first sentence stated, ‘the moderator endeavours to prove that the decision by the sword, hath, and will be destructive to us’. The author aimed to ask the reader to ‘inquire how farre it [the civil war] tends to the g[ene]rall good, by what hath already happened, and what must

revealed conspicuously in the pages with his large corrections and revisions. Beal, ‘CELM: Edward, Lord Herbert of Chirbury (1582?–1648)’. I accessed these manuscripts in September 2015.

¹³² Chapter 5 focuses on an early Civil War controversy whether conscience grants that the people could resist a tyrant, but arguments in E5/3/45 cannot fit the discussion.

¹³³ Without a title, the manuscript might have lost some folios between folio 9v and 10r since their content does not match. Moreover, some folios might have also been lost in the end. E5/3/45 is likely to be a collection of Herbert, not a work written by him. Rossi said that it was not written by Herbert since his autograph often brings many corrections and revisions. Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, vol. III, 499. In addition to this reason, two pieces of internal evidence support the same supposition. In the manuscript many times the author of this manuscript stated ‘saith hee [the moderator]’ as if the author had been recording the opinion of a moderator. ‘Notes on the King, Parliament and the Civil War’ (National Library of Wales, n.d.), fols 1v-3r. A clear example: ‘But how justifiable, how necessary, and on which side this warre was defensible, or offensive, I shall not (saith hee) vndertake to debate, or determine’.

happen in the prosecution of it'.¹³⁴ The author then doubted that the Civil War would bring a good religion,¹³⁵ a possible good law and liberty,¹³⁶ and possible happiness of the Common Wealth.¹³⁷ Aiming to avoid the War and make peace between both sides, the viewpoints of E5/3/45 do not touch the issue of obedience and resistance. Moreover, although this manuscript could show that Herbert was aware of the viewpoint of the moderator during the Civil War, this does not in any way contradict the main argument of chapter 5; that is, Herbert inclined to agree that conscience grants that the people could resist a tyrant.¹³⁸

This section has revealed the origins and basic contents of Herbert's seven manuscripts concerning matters of religion and politics. Again, these manuscripts deserve more attention and examination, and they are reliable sources that reveal Herbert's intellectual interests. These manuscripts were kept with his letters and manuscripts of his autobiography, verses, philosophical work, religious treatises, and historical works. Moreover, forty-nine items concerning King, Parliament and State affairs were collected by Herbert when he was writing the history of King Henry VIII in the 1630s, and when he was a member of the Short Parliament. In this section, the analyzed six manuscripts provide a preliminary base for this thesis to show that Herbert was concerned about contemporary issues of religion and politics. Chapter 4,

¹³⁴ 'Notes on the King, Parliament and the Civil War', fols 2v-3r.

¹³⁵ CF: 'If Religion bee the principall reason [of the Civil War], how few hopes haue wee to see it rectified by Warre, the nurse of barbarism'. See Ibid., fol. 3v.

¹³⁶ The author stated that 'new Statutes' erected by the sword 'would be put short lived, or vse lesse; for no Politique ties, no not the most sacred assurance of an oath could ever make Princes observe the execution of them'. At the same time, the author said that 'our liberties are not like to bee much enlarged, or secured by it [the sword]' since 'Martiall Law will ever Long disseize vs of our Possessions, our Estates, and Lives'. Ibid., 5r-5v.

¹³⁷ A large amount of armies, said the author, 'must need consume cattle and sheepe, and the farmers stock, and so beget a famine with its companions, the plague, small pox, flux'. 'Notes on the King, Parliament and the Civil War', fol. 5v. Furthermore, the treasure of the Land wilbe consumed, trade vtterly decayed, Arts Lost; Learning changed into martiall Discipline'. The farmers and the cities would neither be able to survive long themselves, nor support the armies. 'Notes on the King, Parliament and the Civil War', fols 6v-7r.

¹³⁸ But still I will enclose the transcription of E5/3/45 in the Appendix, so that readers can have access to it.

by exploiting E5/3/30, E5/3/34, E5/3/42, E5/3/46, and E5/3/49, will argue that Herbert was interested in the history and authority of Parliament and was in favour of Parliament's sovereignty over the King. Next, Chapter 5, by using E5/3/44, E5/3/46, and E5/3/49, will argue that Herbert in principle agreed that the people could lawfully resist a tyrant.

Chapter 2: Herbert's Theory of Conscience

This chapter focuses on Herbert's theory of conscience and its close relationship both with the philosophical theory presented in *De Veritate* and with the theories of conscience advanced by contemporary English casuists, including William Perkins (1558-1602), William Ames (1576-1633), Robert Sanderson (1587-1663), Jeremy Taylor (1613-1667), and Richard Baxter (1615-1691). Herbert's theory of conscience shared many ideas with those of the English casuists, including the definition and the authority of conscience. However, it was also connected to his own philosophical theory, particularly in his claim that conscience was guided by the common notions and by grace, both of which were fundamental ideas in *De Veritate*. By proposing his theory of conscience Herbert anticipated in discussing many important contemporary cases of conscience. His concern for conscience formed a fundamental part of his thought in general, and his insistence that individual conscience should be protected from any encroachment of other authorities provides the common core theme of the following chapters.

The main issue concerning conscience in the seventeenth century arose out of conflicts between external authorities and individual conscience, such as between the prescribed teachings of national churches and an individual's religious beliefs, between public duty and private conscience, and between an individual's political allegiance and religious stance. This kind of conflict could be traced to the Reformation in the sixteenth century, when the Roman Church and its clergy were accused of claiming the exclusive right to interpret the Bible, where the foundation of conscience was usually laid. Martin Luther, dissatisfied with the Roman Church and its systems of penitence – especially its selling of indulgences in return for absolution – claimed that individuals were entitled to a kind of freedom of conscience

given by God.¹ Arguments over the oppression of individual conscience continued after the Western Church divided. The emergence of Protestant denominations and the creation of national churches made the situation even more contentious, and the birth of the Anglican Church was no exception. When the Anglican Church was created, Catholics were the first group to face the moral dilemma of either taking the oath of political allegiance to the Crown or preserving their own religious stance.² In other words, facing the danger of losing their property and life, Catholics or recusants often faced a conflict between their public duty and their private conscience. The victims could only preserve either their religious beliefs or their bodies but not both, and the well-known case of Thomas More was discussed by Herbert in his *The Life and Raigne of King Henry the Eighth*.³

Scholars have described the seventeenth century as the Age of Conscience, partly because clashes between external authorities and individual conscience continued and became even worse.⁴ The beginning of the seventeenth century saw the Gunpowder Plot, when the Catholic Robert Catesby and his followers' consciences were justified, as they claimed, in attempting to murder King James I and his members of Parliament. In the same year, 1605, after the plot failed, the English Parliament reacted by passing the Popish Recusants Act, demanding that Catholics take the oath of allegiance and

¹ Richard Sorabji, *Moral Conscience through the Ages Fifth Century BCE to the Present* (Oxford: Oxford University Press, 2015), 4.

² Both the Act of Succession of 1535 and the Oath of Supremacy and Act of Uniformity of 1559, for instance, brought such moral dilemmas to Catholics. Moreover, as Alexandra Walsham has pointed out, during the reigns of Queen Mary and Queen Elizabeth when the Anglican Church changed its positions, those who were unwilling to accept the prescribed liturgies of the Established Church adopted some ways to express their disagreements. These included sitting behind the pillar when the minister was preaching and attending the service but praying privately. See Alexandra Walsham, 'Ordeals of Conscience: Casuistry, Conformity and Confessional Identity in Post-Reformation England', in *Contexts of Conscience in Early Modern Europe, 1500-1700*, ed. Harald Braun and Edward Vallance (Basingstoke: Palgrave Macmillan, 2004), 34-37.

³ *L&R*, 392a-394a.

⁴ Keith Thomas, 'Cases of Conscience in Seventeenth-Century England', in *Public Duty and Private Conscience in Seventeenth-Century England: Essays Presented to G.E. Aylmer* (Oxford: Clarendon, 1993), 29. Moral dilemmas or problems of conscience could be seen in other issues such as marriage problems, business ethics, duelling, and suicide in the seventeenth century; however, conflict between religious and political allegiance was still the main issue in this era. See *Ibid.*, 46-48.

deny the power of the Pope to depose a king. Four decades later, when the Civil War broke out, both royalists and parliamentarians justified taking up arms on grounds of conscience and asked the people to join their side. The Civil War brought numerous moral dilemmas to the people, especially to those who were reluctant to be drawn into the war.

Modern scholars have also connected conscience with the development of casuistry, which flourished from the mid sixteenth century to the mid seventeenth century. Casuistry was the study of cases of conscience where casuists provided suggestions and guidance on difficult moral questions. The work of casuists included applying moral principles to a specific case – for instance, that telling a lie was immoral was a principle, but people might get confused whether we could be justified in lying to a murderer in a specific case – and tackling cases where different moral principles appeared to clash. Casuistry first developed in the Roman Church in the thirteenth century and many works were published for providing guidance and resolutions of matters of conscience.⁵ It became prevalent in sixteenth-century and seventeenth-century Europe but gradually gained a pejorative meaning of equivocating and using specious reasoning to justify sins.⁶ The bad reputation was usually related to Jesuits who taught priests how to maintain their religious beliefs and not be convicted of crimes in Protestant regimes at the same time.⁷ Casuistry became

⁵ Edmund Leites, 'Casuistry and Character', in *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites (Cambridge: Cambridge University Press, 1988), 119.

⁶ J. P. Sommerville, 'The "New Art of Lying": Equivocation, Mental Reservation, and Casuistry', in *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites (Cambridge: Cambridge University Press, 1988), 159–62. The French usage presented the same pejorative connotations. See Margaret Sampson, 'Laxity and Liberty in Seventeenth-Century English Political Thought', in *Conscience and Casuistry in Early Modern Europe* (Cambridge: Cambridge University Press, 1988), 72–74. Trying to wash off the bad reputation of casuistry, some modern scholars argued that casuistry was a form of moral reasoning. See James F. Keenan and Thomas Shannon, *The Context of Casuistry* (Washington, D.C.: Georgetown University Press, 1995), Introduction; Albert R. Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley; London: University of California Press, 1988).

⁷ Thomas, 'Cases of Conscience in Seventeenth-Century England', 32; Sommerville, 'The "New Art of Lying": Equivocation, Mental Reservation, and Casuistry', 159–84.

prevalent after the Reformation when many people were troubled by conflicts between retaining their religious beliefs and taking political allegiances; moreover, people at the same time were in need of advice for other related issues, such as how to interact with heretics and people of different religions, and whether a Protestant and a Catholic could lawfully get married. Meanwhile, the discovery and expansion of the new world also brought new moral issues that increased the need for casuistry.⁸ Casuistry gradually receded in late seventeenth century England when religious toleration expanded after the Glorious Revolution, and it diminished across the Continent as well. This waning of casuistry also accompanied the growth of the spirit of individual autonomy – i.e. the belief that people should decide and direct themselves independantly on moral and spiritual issues – something that made casuistry redundant.⁹

Herbert's epistemological work *De Veritate*, his religious works (*De Religione Laici*, *De Religione Gentilium*, and *A Dialogue Between a Tutor and His Pupil*), his historical work *The Life and Raigne*, and his personal collections can all be reinterpreted by putting them into the context of casuistry of this age. First, Herbert composed these works during the heyday of casuistry, c. 1550-1650. He shared many topics with casuists, including the questions of whether one should take the oath of allegiance and give up one's religious belief, and of what religion a layman should adopt in this unsettled era. Secondly, as I have mentioned above, casuistry occupied a

⁸ New moral issues included problems of commerce, ownership of the 'new' land, and how to interact with people of different religion. James F. Keenan, 'William Perkins (1558-1602) and the Birth of British Casuistry', in *The Context of Casuistry* (Washington, D.C.: Georgetown University Press, 1995), 107. Also see footnote no. 4 of this section.

⁹ Sorabji, *Moral Conscience through the Ages Fifth Century BCE to the Present*, 4–5. Edmund Leites pointed out that the last English great casuist was Jeremy Taylor (1613-1667) and by the early eighteenth century casuistry had become unnecessary. Moreover, individual's moral will gained its importance, as New Platonists said that 'the truly moral will achieve a union with God'; at the same time, the bindings of religion became weaker, while the authority of the law and political power stronger. See Leites, 'Casuistry and Character', 120–32; Thomas, 'Cases of Conscience in Seventeenth-Century England', 52–53.

very important role in this age mainly because many new problems of conscience emerged. It was the same with the birth of Herbert's epistemological and religious works. The existing moral principles and rules, as the modern scholar Keenan stated, could not meet the needs of the people of this age, and hence there was an 'epistemological vacuum'.¹⁰ Herbert's *De Veritate*, an epistemological work, searched for a universal theory that could provide solid knowledge for people, and then remove their inner fears and scruples.

However, works that could be discussed in the casuistical context did not mean that they could be categorized as works of casuistry or that their authors were casuists; it depends on the meaning of casuistry one adopts. In a narrow or restricted sense, casuistry was practiced by clergymen and using some particular methods of reasoning such as syllogisms. English casuists William Perkins, William Ames, Robert Sanderson, Jeremy Taylor, and Richard Baxter were either Anglican clergymen or Protestant divines or theologians.¹¹ In a broad or general sense, the works of casuistry included those which could provide advice or guidance for an individual's moral dilemma; their authors might not necessarily be priests or divines, and their methods were not restricted. The political works of Hugo Grotius (1583-1645), Thomas Hobbes (1588-1679), and John Locke (1632-1704) were discussed in this sense. Thus, when I put Herbert's work into the casuistical context, I do so in the broad sense of the term. Herbert's works did not belong to the works of casuistry in the restricted sense, but by discussing them in the casuistical context we are able to interpret Herbert's works from another angle, and hence shed some light on them. For instance, the five religious common notions in *De Veritate* and *De Religione Laici* have often

¹⁰ Keenan, 'William Perkins (1558-1602) and the Birth of British Casuistry', 107-8.

¹¹ Other casuists were of the same case, including Joseph Hall, bishop of Norwich, John Sharp, archbishop of York, and Thomas Barlow, bishop of Lincoln. See Harald Braun and Edward Vallance, *Contexts of Conscience in Early Modern Europe, 1500-1700* (Basingstoke: Palgrave Macmillan, 2004), xii.

been regarded as religious tenets. However, within the context of casuistry we can see the five religious common notions as the advice Herbert provided for people when they faced the oppressions of religious sects and of the clergy. Meanwhile, the main question of *De Veritate* and *De Religione Laici*, therefore, is transformed into a case of conscience: what should people do when facing the oppression of religious sects, and how could people search for the best religion and obtain the peace of conscience? By viewing the five common notions of *De Veritate* and *De Religione Laici* in a different way we can see that Herbert intended to address the problem of conscience and solve the dilemmas many people faced. Moreover, with the help of the context of casuistry we are able to investigate which groups of people discussed the same cases of conscience and what foundations they adopted when coping with the same problems, and then position Herbert's discussions in that general context.

The first section will present the definition of conscience in the seventeenth century via the works of English casuists. Believing that conscience held high authority, they defined conscience as a rational faculty and an intellectual activity presenting through a syllogistic dialogue. As a faculty, conscience received moral principles from nature, Scripture, or teachings of church traditions. As an intellectual activity, it gave judgement to every particular action. The second section will present Herbert's theory of conscience and compare it with those of the English casuists. Herbert shared many key points with the English casuists on the basic theory of conscience. He had a similar definition of conscience, and he agreed with them that God implanted some common notions or moral principles in the mind of every human being. Moreover, like the English casuists, Herbert stressed the importance of the individual's conscience over the authorities of worldly institutions and of the clergymen. However, Herbert's theories differed in some respects from those of the English casuists. Herbert suggested that common notions are far more reliable than

Scripture and church traditions regarding the sources of moral principles. Moreover, a troubled conscience, in addition to resorting to common notions for the best solution, should seek help from grace, since both conscience and grace guide people to live moral lives and to reach salvation. The contribution of this chapter is to reveal Herbert's theory of conscience, which has never been explored. Guided by both the common notions and grace, the concept of individual conscience constituted a fundamental part of Herbert's thought, and the common theme of his religious and historical works. Moreover, by showing the similarities between Herbert's theory and those of the English casuists, this chapter challenges the idea that his philosophical and religious treatises were wholly distinctive in his time and that they anticipated many ideas of the late seventeenth century and the early eighteenth century.

2.1 Conscience in Seventeenth Century England

Casuistry, which was prevalent in seventeenth century England, constituted the main content of the theory of conscience in this era and was viewed as a necessary skill of local ministers, allowing them to guide parishioners who were afflicted with moral dilemmas. When discussing the parson's accessory knowledge, Herbert's brother, George Herbert, maintained that the ideal parson should 'greatly esteem also of cases of conscience, wherein he is much versed'.¹² Although the English casuists published fewer works than the Catholic casuists – the Roman Church published more than six hundred works on casuistry after the Council of Trent –¹³ casuistry did not remain static in England. In fact, in this period the English casuists sought to develop a different system of casuistry from that of the Roman Catholics to meet the need of people.¹⁴ As William Ames said in the opening of his *Conscience with the Power and Cases Thereof* (1639), 'this Practical teaching was much wanting'.¹⁵

According to the English casuists, conscience is a rational faculty of the practical understanding. William Perkins said that conscience 'is a part of the understanding in all reasonable creatures, determining of their particular actions' and that 'conscience is not placed in the affections or will'.¹⁶ Following Perkins' theory, William Ames stated that conscience 'belongs to the Understanding, not to the Will'.¹⁷ Robert Sanderson, agreeing with them, said conscience is 'a Faculty or a habit of the practical

¹² George Herbert, 'A Priest to the Temple, or, The Country Parson', in *The Works of George Herbert*, ed. F. E. Hutchinson (Oxford: The Clarendon Press, 1941), 229–30.

¹³ Thomas, 'Cases of Conscience in Seventeenth-Century England', 38.

¹⁴ William Perkins, the pioneer of English casuistry, stated in the dedicatory of his *The Whole Treatise of the Cases of Conscience* (1608) that 'we have just cause, to challenge the Popish Church, who in their Case-writings have erred'. William Perkins, 'The Whole Treatise of the Cases of Conscience', in *William Perkins 1558-1602, English Puritanist: His Pioneer Works on Casuistry*, ed. Thomas F. Merrill (Nieuwkoop: BDe Graaf, 1966), 82.

¹⁵ William Ames, *Conscience with the Power and Cases Thereof* (London, 1639), to the reader.

¹⁶ William Perkins, 'A Discourse of Conscience', in *William Perkins 1558-1602, English Puritanist: His Pioneer Works on Casuistry*, ed. Thomas F. Merrill (Nieuwkoop: BDe Graaf, 1966), 5.

¹⁷ Ames, *Conscience with the Power and Cases Thereof*, 1.

understanding'.¹⁸ Meanwhile, conscience was defined as an intellectual and practical activity judging actions.¹⁹ In other words, conscience 'determines or gives sentence of things done, by saying unto us this was done, this was not done, this may be done, this may not be done; this was well done, this was ill done.'²⁰ During the said activity moral actions were thus done 'by the use of Reason and Argument';²¹ this process at the same time implies that conscience is not an infallible mechanism and that the accuracy of conscience's judgement could be improved by the development of one's reasoning. By defining conscience as a rational faculty and as an intellectual activity the casuists connected moral principles with moral actions. The definition of the casuists, however, did not carry the modern notion of individualism or the notion of respect for the authority of an individual's idea of morality – conscience had an established standard and an established way of function.²² Moreover, conscience did not operate as a passive accuser merely warning the mind of the sinner;²³ it was an active mechanism.

Echoing their definition of conscience – conscience as a faculty and as an activity –, the English casuists said that conscience was composed of *synderesis* and *conscientia*, linked through a syllogistic dialogue.²⁴ *Synderesis* comprises the fundamental moral principles acquired either by nature or by nurture, while *conscientia* is the application of the moral principles to specific actions through the

¹⁸ Robert Sanderson, *Several Cases of Conscience: Discussed in Ten Lectures*, trans. Robert Codrington (London: Printed by ThoLeach, 1660), 3.

¹⁹ CF: 'The proper end of conscience is, to determine of things done'. Perkins, 'A Discourse of Conscience', 6. CF: 'Conscience is not a contemplative judgement' but a 'practicall judgement'. Ames, *Conscience with the Power and Cases Thereof*, 1.

²⁰ Perkins, 'A Discourse of Conscience', 6.

²¹ Sanderson, *Several Cases of Conscience*, 2.

²² Walsham, 'Ordeals of Conscience: Casuistry, Conformity and Confessional Identity in Post-Reformation England', 32.

²³ Camille Slight, *The Casuistical Tradition in Shakespeare, Donne, Herbert, and Milton* (Princeton, N.J.: Princeton University Press, 1981), 10–11.

²⁴ This description originates from the theory of Aquinas, see Thomas Wood, *English Casuistical Divinity during the Seventeenth Century* (London: SPCK, 1952), 68.

use of reason. In other words, conscience – as a faculty – receives moral principles which form *synderesis* and then conscience – as an activity – makes its moral judgements in a process called *conscientia*; therefore, moral actions are outcomes of the mechanism of *synderesis* and *conscientia*.²⁵ The mechanism could be shown by a syllogistic dialogue, consisting of a major premise (a moral principle), a minor premise (a fact or a state), and a judgement as in the following example:

Major: Whatever is unjust ought to be avoided

Minor: All theft is unjust

Therefore all theft is to be avoided

Partly because the syllogism can show the components and the mechanism of conscience, and partly because it can also explain the place and role of it (which I will explain below), the English casuists maintained that in ‘syllogism alone is contained the whole nature of Conscience’.²⁶

Concerning the way *synderesis* gains its moral principles, the English casuists presented more detailed explanations. According to Sanderson whose theory could encompass those of other casuists,²⁷ man could acquire the moral laws from three lights: the light of nature, the light of Scripture, and the light of doctrine – or, to put it another way, the light innate, the light inferred, and the light acquired.²⁸ The first

²⁵ There are four kinds of outcomes depending on whether the principle used complies with the law of God and whether the judgement is sure or unsure: right conscience, erring conscience, scrupulous conscience, and doubtful conscience. Slights, *The Casuistical Tradition in Shakespeare, Donne, Herbert, and Milton*, 12–17; Wood, *English Casuistical Divinity during the Seventeenth Century*, 74–78; Braun and Vallance, *Contexts of Conscience in Early Modern Europe, 1500-1700*, xvi–xviii.

²⁶ Ames, *Conscience with the Power and Cases Thereof*, 4. CF: ‘The Nature of Conscience has always thought fit to explain it by a practical syllogism’. Sanderson, *Several Cases of Conscience*, 10.

²⁷ Sanderson’s theory can encompass theories of the Catholic Church as well. Generally speaking, the Catholic casuists maintained that both Scriptures and the teaching of the Church tradition comprise the moral principles in mind, while the Protestant casuists emphasized that Scripture alone is sufficient to form the moral principles. Walsham, ‘Ordeals of Conscience: Casuistry, Conformity and Confessional Identity in Post-Reformation England’, 33.

²⁸ CF: ‘The actions of reasonable creatures are governed by laws, and these laws are put into a man’s soul or mind as into a treasury or repository: some in his very nature, some by after-actions, by education and positive sanction, by learning and custom’. Jeremy Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, ed. Reginald Heber, vol. 11 (London: Printed for Longman, Orme, Brown, Green and Longmans, 1822), 369. The work I cited was his *Ductor Dubitantium: or, The Rule of*

light ‘proceeds from the law of Nature’, and by the said light God implants ‘certain propositions and practical principles’ in the mind of every human being when God creates man.²⁹ The moral principles man acquired by this light are ‘common notions ... which the Apostle doth say is written in the Hearts of men’,³⁰ said Sanderson. Moreover, these principles – such as that ‘good is to be done, [and] evil is to be avoyded’ and ‘that God is to be worshipped, and no man [is] to be injured’³¹ – belong to the primary and universal level and leave no room for controversy.³² It is worth noting that by the light innate not only Christians but also non-Christians are able to acquire fundamental moral principles. The second light is the light of Scripture, by which man obtains moral principles from the written word of God. Since the principles acquired via this light contain both those of the universal level and ‘those that are but local, personal, or alterable laws’,³³ the English casuists maintained that the principles in the Bible should be examined carefully before application. Furthermore, they placed greater emphasis on the moral laws taught in the New Testament than those taught in the Old Testament since many laws – including the moral, the ceremonial, and the judicial – were prescribed by Moses particularly for the Jews; hence, these laws might not bind the conscience of Christians.³⁴ As Baxter put it, ‘the covenant mixt of grace and works, proper to the Jews, with all the Jewish law as such’ by no means binds the conscience of Christians and other peoples around

Conscience printed from vol. 11 to 13 of the whole series.

²⁹ Sanderson, *Several Cases of Conscience*, 132.

³⁰ Ibid. CF: ‘For the law of nature is nothing but the law of God, given to mankind for the conservation of his nature, and the promotion of his perfective end’. Jeremy Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, vol. 12 (London: Printed for Longman, Orme, Brown, Green and Longmans, 1839), 213.

³¹ Sanderson, *Several Cases of Conscience*, 133.

³² ‘It is not lawful to doubt of the truth of them, nor is it possible for any one who understands the sence of the words, to erre concerning them’. Ibid.

³³ Richard Baxter, *A Christian Directory* (London: Printed by Robert White, 1673), 683–85.

³⁴ Sanderson, *Several Cases of Conscience*, 136–142; Jeremy Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, vol. 13 (London: Printed for Longman, Orme, Brown, Green and Longmans, 1839), 223–29; Baxter, *A Christian Directory*, 904–905 (case no. 155 and 156).

the world.³⁵ The final way to acquire the moral principles is via the light of doctrine, an acquisition accomplished by ‘the discourse of Reason and Authority ... [and] the Judgement and the Practice of the Church’.³⁶ This means that the learning of the moral laws could be improved by the teaching of the Church – that is, by the teaching of the established Church, according to Sanderson.

Individual casuists might put different emphases on the way a man acquired his moral principles though all casuists agreed that God is their ultimate origin.³⁷ Perkins stressed the importance of the light of Scripture more than the other two lights. He maintained that ‘Scriptures of the olde and new testament containe in themselves sufficient direction for all actions’ and that ‘whatsoever is right and good therein [in nature], is contained in the written word of God’.³⁸ Although Perkins agreed that the law of nature could provide some moral principles, he declared it ‘corrupt, imperfect, [and] uncertain’. Moreover, he did not deem the ecclesiastical tradition, especially the Catholic tradition, a good way to know the moral principles.³⁹ Holding a different view from Perkins, Sanderson laid great emphasis on the importance of the light of nature as the guide of conscience since this light provided the infallible common notions to every human being. He argued that ‘the holy Scripture, or the word of God written, is not the Adequate Rule of Conscience’, partly because Scriptures contained secondary principles and other laws particularly for the Jews. Furthermore, since non-Christians had conscience as well, there had to be some moral laws more universal than those in the holy Scriptures prescribed particularly for Christians; otherwise, there would be no guide for the conscience of gentiles, which was contrary

³⁵ Baxter, *A Christian Directory*, 904.

³⁶ Sanderson, *Several Cases of Conscience*, 143-144.

³⁷ There is no such difference concerning *conscientia* since it is basically the man’s ability to reason and to judge.

³⁸ Perkins, ‘A Discourse of Conscience’, 42.

³⁹ ‘And as for the best unwritten traditions, let all the Papists in the world answere if they can’. Ibid.

‘to reason, experience, and the expresse testimony of the Apostle’.⁴⁰ Sanderson did attach some weight to Scriptures; he stated that the Bible did provide many important moral laws.⁴¹ However, the Bible was not the adequate rule of conscience but the ‘Adequate Rule of Faith, and of things supernaturally to be believed, as also of all moral actions so far as they are spiritual, and ordained to a supernatural end’.⁴² But the difference between Perkins and Sanderson is not fundamental, and it is a matter of emphasis only. In fact, Perkins’ idea of Scriptures contains the light of nature and reason; he widely cited the works of the ecclesiastical tradition when he was writing his work.⁴³ For Sanderson, similarly, both the light of nature and the light of Scripture are part of ‘the will of God’.⁴⁴ Perkins, comparatively speaking, was mainly concerned with the conscience of Christians, while Sanderson had concern for the conscience of all human beings.

From the definition of conscience or the syllogism, the role and place of conscience could be shown. Presenting a moral principle, the major premise indicates that conscience is a lawgiver or dictator. Showing a fact or a state, the minor premise demonstrates that conscience is ‘a Witness’.⁴⁵ Delivering a judgement, conscience is like ‘a Judge’ or ‘an arbitratour’.⁴⁶ Through the roles shown in the syllogism conscience is able to accuse the sinner, excuse the innocent, and console the falsely accused.⁴⁷ These roles led the English casuists to describe conscience as ‘the little god’ in the mind of every human being;⁴⁸ it is ‘the image of God’, ‘God’s vicar’, and

⁴⁰ Sanderson, *Several Cases of Conscience*, 119.

⁴¹ Ibid., 120-122.

⁴² Ibid., 125-126.

⁴³ Slights, *The Casuistical Tradition in Shakespeare, Donne, Herbert, and Milton*, 30.

⁴⁴ Sanderson, *Several Cases of Conscience*, 126-127.

⁴⁵ Ames, *Conscience with the Power and Cases Thereof*, 3.

⁴⁶ Perkins, ‘A Discourse of Conscience’, 5.

⁴⁷ CF: ‘There is no where to be found, a more faithful Admonisher, or a more diligent Accuser, or a severer Witnesse, or an uncorrupt Judge, or a sweeter comforter, or a more importunate Enemy’. Sanderson, *Several Cases of Conscience*, 1-2.

⁴⁸ ‘It is (as it were) a little God sitting in the middle of mens hearts’. William Perkins, *A Discourse of Conscience* (Printed by Iohn Legate, 1608), 9. CF: ‘The Conscience of man is a mans judgement of

‘God’s deputy’.⁴⁹ They therefore asserted that conscience is ‘a thing placed of God in the midst between him and man’ or ‘an intermediary between man and God’ and that ‘the Conscience is immediately subject to God and his will, and therefore it cannot submit itself unto any creature without Idolatry’.⁵⁰

In addition to discussing the role and place of conscience, the English casuists maintained that God alone has authority over individual conscience. ‘The Law of God onely doth bind the Conscience of man,’ while ‘mans lawes, doe not bind the Conscience’, wrote Ames.⁵¹ Before presenting the adequate rule of conscience, Sanderson stated that ‘God alone hath a most proper and direct command on the Consciences of all men; so that none but God alone hath power to impose a Law upon the Conscience of any man’.⁵² In Sanderson’s view, only God is the ‘Lawgiver’ and gives ‘Rewards and Punishments according to the quality of every conscience’.⁵³ But it is worth noting that this point does not dispense men from obeying human laws; man is bound to obey them as long as they either comply with God’s law or are not contrary to God’s law – i.e. as long as they are indifferent things.⁵⁴

Since only God had authority over the individual’s conscience, the English casuists stressed that the conscience had greater authority than other worldly institutions. The English casuists maintained that their works were written to guide

himself, according to the judgement of God of him’. Ames, *Conscience with the Power and Cases Thereof*, 1.

⁴⁹ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 11:370–71.

⁵⁰ Perkins, ‘A Discourse of Conscience’, 5–6. In another place he said ‘it is placed in the middle between man and God, so as it is under God, and yet above man’. Perkins, ‘The Whole Treatise of the Cases of Conscience’, 99. Also see Ames, *Conscience with the Power and Cases Thereof*, 6. CF: ‘By nature the state of Conscience is placed as it were in the middle betwixt both, beneath God, but above Man, subject unto God as Hand-maid, but set over man as a Mistresse’. Sanderson, *Several Cases of Conscience*, 37.

⁵¹ Ames, *Conscience with the Power and Cases Thereof*, 6.

⁵² Sanderson, *Several Cases of Conscience*, 112.

⁵³ *Ibid.*, 114.

⁵⁴ ‘The Laws of men, and the mandates and orders of our Superiours, do oblige the Conscience, but by no power or authority, but by the vertue of the Commandement of God’. *Ibid.*, 111.

people's consciences rather than to dominate them.⁵⁵ Introducing his *Ductor Dubitantium: or, The Rule of Conscience*, Jeremy Taylor wrote that he intended 'to afford to the world a general instrument of moral theology, by the rules and measures of which, the guides of souls may determine the particulars that shall be brought before them'.⁵⁶ Baxter, whose casuistical work followed the path of Ames', said he wrote his work in a 'directing way' whereby he gave readers 'the answer in a direction, [and] an ingenious reader can tell what question it is that is answered. And so, many hundred cases are here resolved'.⁵⁷ Moreover, the English casuists criticized Roman Catholic priests for determining the solutions to the moral questions the people met with in their daily lives.⁵⁸ Meanwhile, they denied that the statement of the authorities was sufficient to secure a good conscience. 'It is not enough', wrote Ames, 'for a good conscience to adhere to the authority of men, though they be learned and godly; because the conscience is not by itselfe to be subjected to the judgement of man'.⁵⁹ Sanderson had the same opinion that 'the example of some holy man, or the authority and judgement of a man famous for learning and piety' could not keep the peace of the conscience of men.⁶⁰ However, stressing the authority of the individual's conscience and reducing the importance of the statements of the authorities did not mean that individuals could always perfectly solve moral dilemmas on their own. The English casuists still encouraged lay people to solve their moral dilemmas with the advice of their local parson —⁶¹ since casuistry required both good knowledge and

⁵⁵ The works of the Roman Catholic casuists were written mainly for clergymen, while the works of the English casuists were for everyone. Braun and Vallance, *Contexts of Conscience in Early Modern Europe, 1500-1700*, xiv; Keenan and Shannon, *The Context of Casuistry*, ix; Keenan, 'William Perkins (1558-1602) and the Birth of British Casuistry', 112.

⁵⁶ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 11:362–63.

⁵⁷ Baxter, *A Christian Directory*, vii.

⁵⁸ Braun and Vallance, *Contexts of Conscience in Early Modern Europe, 1500-1700*, xiv.

⁵⁹ Ames, *Conscience with the Power and Cases Thereof*, bk3, 86.

⁶⁰ Sanderson, *Several Cases of Conscience*, 70-71.

⁶¹ 'When a question requires the reason of many rules, it is not every hand that can apply them; men will for ever need a living guide; and a wise guide of souls will, by some of these rules, be enabled to answer most cases that shall occur'. Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 11:363.

experience –⁶² but they emphasized that the final moral decision should be left to the individual.

The English casuists stressed the importance of individual conscience not only because God alone had the authority over it but also because they were concerned about the individual's salvation.⁶³ Perkins in *The Whole Treatise of the Cases of Conscience* (1608) asked, 'how a man may be in conscience assured of his owne salvation?' and answered, by living a holy life according to the teaching of Scriptures.⁶⁴ As James F. Keenan pointed out, Perkins gave birth to his work on casuistry in response to the anxiety and confusion of the people in his parish; moreover, Perkins intended to require them to be self-understanding and self-governing.⁶⁵ In brief, individuals should be responsible for their own lives.

This section has presented English casuists' theory of conscience. Conscience was both a rational faculty receiving moral principles and an intellectual activity applying principles to a particular case. The individual's conscience held higher authority than worldly institutions, since conscience was the little god in the mind of every human being. Conscience was bound to obey the law of God, while it was also required to obey human laws which did not contradict the former. Individuals should seek help from their local ministers when faced with moral dilemmas, but the final decision should be made by the individual. The discussions of this section form the base of the next section and of Chapter five. In the next section, Herbert's theory of

⁶² The common skills of a casuist include mastering the language of Latin, Greek, and Hebrew. Moreover, a casuist should be skilled at arts and sciences and reasoning. See Thomas, 'Cases of Conscience in Seventeenth-Century England', 35–36. J. S Morrill, Paul Slack, and D. R Woolf, *Public Duty and Private Conscience in Seventeenth-Century England: Essays Presented to G.E. Aylmer* (Oxford: Clarendon, 1993), 35–36.

⁶³ Keenan, 'William Perkins (1558-1602) and the Birth of British Casuistry', 112–13; J. S Morrill, Slack, and D. R Woolf, *Public Duty and Private Conscience in Seventeenth-Century England: Essays Presented to G.E. Aylmer*, 33.

⁶⁴ Perkins, 'The Whole Treatise of the Cases of Conscience', 111–18.

⁶⁵ Keenan and Shannon, *The Context of Casuistry*, ix; Keenan, 'William Perkins (1558-1602) and the Birth of British Casuistry', 122.

conscience will be compared with those of English casuists. They shared many points on the definition of conscience, sources of moral principles, and the authority of conscience. Their differences will be revealed as well. Herbert's theory of conscience was based on his theory of truth, and Herbert emphasized the importance of the common notions as the most reliable sources of moral principles. Moreover, grace, like the common notions, could guide the troubled conscience. In Chapter 5, the English casuists' theory will be applied to a controversy in the early English civil war: whether conscience grants that the people could resist a tyrant. The English casuists all agreed that the people could disobey the unlawful command of a king, while by no means could they resist by force. However, Chapter 5 argues that Herbert held the contrary view that the people could lawfully resist a tyrant.

2.2 Herbert's theory of conscience

Herbert's theory of conscience is discussed in his philosophical and religious treatises, but is an issue that is usually neglected and omitted in discussions of his works. Since Herbert's theory of conscience was based on his theory of truth, I will examine his theory of truth first – especially the roles it assigns to the common notions and to grace – before presenting his theory of conscience. In addition, this section, by building on the findings of the first section, will show the similarities and differences between Herbert's theory of conscience and those of the English casuists.

2.2.1 Common notions and grace in Herbert's theory of truth

Herbert's theory of truth is worth reexamining for two reasons. First, the theory forms the basis of his theory of conscience. As will be discussed below, according to Herbert's theory of truth, the common notions are the most important source of our moral principles. Hence, it is important to begin by discussing how the common notions are obtained, and how we may confirm whether a proposition belongs to the common notions, before considering Herbert's theory of conscience. The second reason is that grace and the common notions – or particular providence and universal providence – both play important roles in Herbert's theory of truth and his theory of conscience. As suggested in Chapter 1, however, previous scholars have given disproportionate emphasis to the common notions while neglecting the importance of grace. In fact, Herbert held that the common notions were not sufficient; as he said, 'Common Providence is not sufficient without the concurrence of Grace and

Particular Providence’.⁶⁶ Moreover, as will be argued later, Herbert held that a troubled conscience should not only resort to common notions, but also seek help from grace. Therefore, Herbert’s view on how grace may be obtained – giving us access to revealed truth – and how grace works, should also be considered first.

In his epistemological work *De Veritate*, Herbert provided a comprehensive statement about how an individual acquired moral principles and about their origin, the common notions. According to Herbert, knowledge of the common notions is obtained through the highest level of human faculties, natural instinct. Natural instinct is the first level of the four fundamental faculties and it ‘conforms with Common Notions’.⁶⁷ In Herbert’s theory, truth, no matter which level it belongs to, could be apprehended only through the conformity ‘between objects and faculties’ – this was Herbert’s definition of truth and the way he described a truth.⁶⁸ As a fundamental faculty, natural instinct is implanted by God in the mind of every human being and ‘it is the immediate instrument of divine Providence’; ‘Common Notions and natural instincts, therefore, here have the same meaning’.⁶⁹ In other words, individuals could acquire common notions, including the common notions of moral principles, due to the universal prevalence of the natural instinct in the human mind. Figure 1 illustrates the relationship between the human faculties, including conscience, and their objects, including the common notions.

⁶⁶ *DRG*, 55.

⁶⁷ *DV*, 116. Cf: ‘Natural Instinct... which springs from the faculties which conform to Common Notions’. *DV*, 115.

⁶⁸ Truth is ‘a matter of conformity between objects and faculties’. *DV*, 78. Cf: ‘the whole of my doctrine of truth is based upon the proper conformity of the faculties with their objects’. *DV*, 80. Hence, there are four kinds of truth: intellectual truth, truth of concept, truth of appearance, and truth of the object. See *DV*, 90-103.

⁶⁹ *DV*, 122.

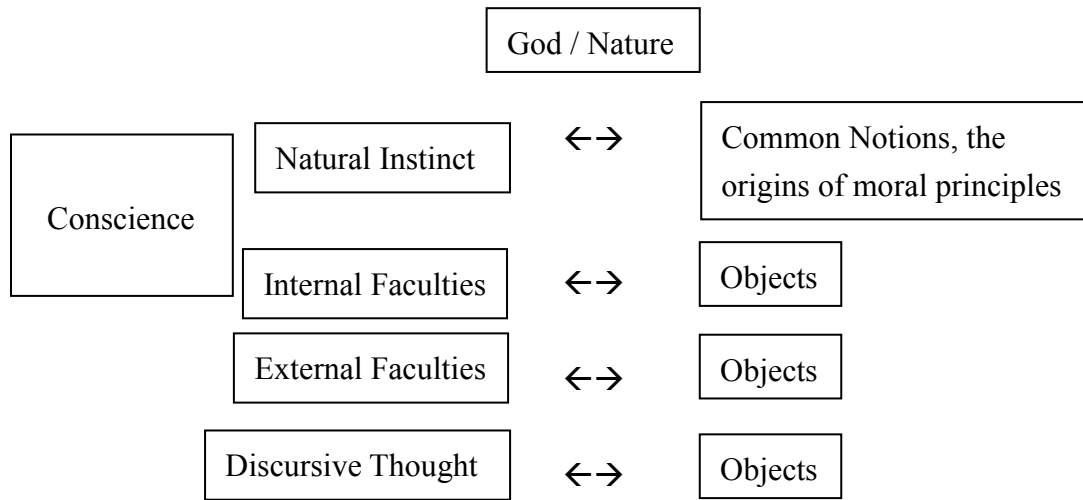


Figure 1: The Relationship between Human Faculties and Objects

The left side of Figure 1 shows the hierarchy of the four fundamental classes of faculties of human beings. According to Herbert, when a faculty of a given class is brought into conformity with its corresponding object, a truth of the same class is generated. Although Herbert classified conscience as an agent or medium belonging to the internal faculties,⁷⁰ as section 2.2.2 will show, he later stated that conscience was the supreme faculty of the internal faculties and ‘a sacred bond linking the higher order to the lower’ since it could receive the moral principles of the common notions.⁷¹ Hence, in this diagram, conscience stretches across the internal faculties and natural instinct.

After showing that every human being is able to acquire the common notions, Herbert then explained the criterion to be used to determine whether a particular proposition belongs to the common notions. He wrote that ‘Universal consent, then,

⁷⁰ For the definition of each of the four faculties, please see *DV*, 146, 208, 233.

⁷¹ *DV*, 188. CF: ‘Conscience is only satisfied when all the faculties are in conformity’ and ‘all the internal forms of consciousness are subject to the faculty of conscience’. *DV*, 205.

will be found to be the final test of truth',⁷² and explained that 'whatever is believed by universal consent must be true and must have been brought into conformity in virtue of some internal faculty'.⁷³ This means that an individual could confirm whether a piece of knowledge belongs to the common notions via the natural instinct in the mind; a truth would 'possesses the witness of some faculty, [while a] falsity will have no such witness'.⁷⁴ Thus, 'universal consent is the teaching of Natural Instinct and is essentially due to Divine Providence'.⁷⁵ In brief, because of universal providence every human being is endowed with natural instinct, and by natural instinct every man is able to acquire the same common notions; this process in the end generates universal consent. It is worth noting that universal consent signifies that theoretically everyone will agree on a truth when his or her faculty is in conformity with the objects under the right conditions,⁷⁶ but in reality whether an individual attains this perfect understanding depends on particular providence or 'the Divine wisdom'.⁷⁷ By presenting the abovementioned point Herbert again 'maintain[ed] that universal consent (which has not been established without the aid of Divine Providence) is in the last resort the sole test of truth'.⁷⁸ Herbert provided an illustration of universal consent: religion. He argued that because all peoples in all time periods had religion, it must be a common notion; furthermore, any religious articles that are universally accepted (such as that a Supreme Deity exists, and ought to be worshipped) must be acknowledged as common religious notions.⁷⁹

⁷² *DV*, 117.

⁷³ *DV*, 116.

⁷⁴ *DV*, 118.

⁷⁵ *DV*, 117.

⁷⁶ About the conditions of each level of truths, please see *DV*, 90-107.

⁷⁷ 'I firmly maintain, however, that it is and always has been possible for all men to reach the truths I have described. But whether they have been manifest, or whether, even when they are manifest they are immediately accepted, I am so far from wishing to discuss that all matters of this nature which depend upon the secret counsels of God, I leave to be inferred from the Divine wisdom and goddness.' *DV*, 305.

⁷⁸ *DV*, 118.

⁷⁹ *DV*, 121. Herbert's theory of universal consent has its weakness, in my opinion. He could not

Common notions are necessary for human beings. Herbert explained that ‘if we had not been endowed with Common Notions’, we would never be able to distinguish between objects, or understand the general nature of things, since ‘our reasoning faculties have nothing beyond the Common Notions to which they can appeal on doubtful points’.⁸⁰ Herbert also maintained that ‘where there is uncertainty, we must have recourse to the Common Notions themselves, for they alone can resolve it’.⁸¹ When an individual misunderstands the nature of an object, errors must not be referred to the common notions but ‘either to the fact that the object is inappropriate, or to the conditions [such as time and place] through which the objects are brought into right conformity’.⁸² Moreover, ‘when they [common notions] are arranged systematically they reflect the eternal wisdom of the universe’ and provide ‘a way which cannot deceive us, for they lead straight to happiness’.⁸³ Therefore, necessity becomes one of the characteristics of the common notions.⁸⁴

Although both Herbert and the English casuists agreed that common notions are one of the sources of moral principles, as section 2.2.2 will show, Herbert stressed their importance and insisted that they are the foundation of the universe, while the English casuists had no such emphasis. As the ‘excellent witnesses of divine Providence’, common notions present ‘the wisdom of nature’, ‘the teaching of natural

reasonably justify a truth as a common notion by universal consent partly because in reality the time each individual’s faculty being in conformity with the object varies and partly because Herbert could not tell us in practice how many people’s agreements on a religious doctrine forms a universal consent – in the ninth chapter where he proposed his well-known five religious common notions he just maintained that they are generally agreed in western histories. However, we, meanwhile, understand that Herbert proposed the theory of universal consent with an eye to solve the religious controversies at his age. ‘Men are ... tormented in spite of the protests of conscience and the inner consciousness, by the belief that all who are outside their particular Church are condemned ... The wretched terror-stricken mass have no refuge, unless some immovable foundations of truth resting on universal consent are established’. Hence, in Herbert’s view, ‘Universal Consent must be taken to be the beginning and end of theology and philosophy’. *DV*, 117-118.

⁸⁰ *DV*, 105, 131.

⁸¹ *DV*, 134.

⁸² *DV*, 134.

⁸³ *DV*, 192.

⁸⁴ Common notions have five other characteristics, including priority, independence, universality, certainty and the method of confirmation. See *DV*, 139-141.

instinct' and 'the exact and surest criterion of Catholic truth'.⁸⁵ Moreover, Herbert held 'them also to be the basis not only of human judgement, but also of the divine, eternal counsel of the universe' and warned that 'to deem them anything less would be blasphemy'.⁸⁶ However, it is worth noting that maintaining that common notions are the foundation of the universe is not equivalent to saying that common notions are the creator of the universe – similarly, it would be an exaggeration to say that the idea of common notions alone forms Herbert's religion. The place of the common notions in Herbert's theory is that they, together with the particular providence or the Grace, manage the operation of the universe.⁸⁷ Describing the mechanism of conscience, Herbert in *De Religione Gentilium* wrote that 'the Common Notions sit as judges [at the court of conscience], and the Supreme God is the arbitrator'; this implies that common notions did not hold the place of God.⁸⁸

Individuals, in addition to being able to acquire truths through the conformity of human faculties and objects, could obtain revealed truth by grace. Herbert provided two personal experiences of obtaining grace,⁸⁹ while describing how an individual receives grace or revelation in Chapter Ten of *De Veritate*. He wrote that 'when in a moment of intense faith we make a special appeal of God, and feel within us His saving power and a sense of marvellous deliverance, I do not doubt that the mind is touched by Grace, or particular providence'.⁹⁰ Similarly, when one attempts to confirm whether a fact comes from revelation, one 'must employ prayers, vows, faith and every faculty which can be used to invoke particular and general providence'; if the fact belongs to revelation, 'the breath of the Divine Spirit must be immediately

⁸⁵ *DV*, 207.

⁸⁶ *DV*, 207.

⁸⁷ For more explanation of this point, see the following paragraphs on Herbert's view of Grace.

⁸⁸ *DRG*, 326.

⁸⁹ See section 2.2.2.3 'Conscience and Grace'.

⁹⁰ *DV*, 311.

felt, for in this way we can distinguish the inner efforts of the faculties for truth from revelations which come from without us'.⁹¹ By Herbert's statements in *De Veritate* we know, at least, that grace is likely to be obtained by employing our prayers, vows, and our God-given faculties, but we still cannot know the exact method or process.

Although Herbert did not provide a comprehensive way to obtain grace, he believed grace would certainly be given if individuals try their best to use all their faculties to invoke and receive grace.⁹² Herbert concluded that the doctrine of grace 'was only grudgingly acknowledged by the ancients, as may be gathered from their surviving works', but he maintained that grace or special providence is a common notion because 'the worship of the Divine Power was recognised in every age'.⁹³ In other words, since Herbert noticed that the ancients without the help of the Bible practiced the worship of God, which is the second religious common notion, he believed that this worship was carried out with the help of God's grace. Presenting the same viewpoint in *De Religione Gentilium*, Herbert stated that pagans 'partook fully of Divine Grace, especially because they knew about the most rational and intelligible parts of true divine worship'.⁹⁴ Herbert held the view that God's grace is prevalent in every age, and as he wrote that 'God does not suffer us to beseech Him in vain, as the universal experience of divine assistance proves'.⁹⁵ Moreover, 'the All Wise Cause of the universe does not suffer itself to be enclosed within its own sphere, but it bestows general Grace on all and special Grace on those whom it has chosen', Herbert claimed.⁹⁶

Grace would not contradict the common notions since in Herbert's theory both

⁹¹ *DV*, 308.

⁹² For Herbert's personal experience to receive grace, especially that to receive a divine imprimatur of *De Veritate* recorded in his autobiography, see section 2.2.2.3.

⁹³ *DV*, 294.

⁹⁴ *DRG*, 55.

⁹⁵ *DV*, 294.

⁹⁶ *DV*, 294.

share the same destination: guiding people to live moral lives and then to salvation.⁹⁷ When discussing the truth of revelation, Herbert maintained both that ‘the breath of the Divine Spirit must be immediately felt’, and that ‘revelation must recommend some course of action which is good; in this way genuine revelations may be distinguished from false and wicked temptations’.⁹⁸ The content of grace, like common notions, would never lead people to live an evil life but a moral life. According to Herbert, a revelation showing an evil content must not be a real revelation, and he provided a classic illustration in *A Dialogue between a Tutor and a Pupil*. Giving the example of Genesis 22:1-10 where Abraham offered his son Isaac as a sacrifice, the pupil asked the casuistical question ‘what a rational man should do in such a case, suppose we heard a strange voice now commanding us to kill one another, what should I think of it?’.⁹⁹ The tutor answered ‘I say then, that according to the dictates of common reason, I should believe that this voice came rather from wicked spirit, than from God’ since ‘all homicide, particularly that of a parent’s destroying his own child with his own hands, without any offence given by him’ is ‘so repugnant to the laws of God and nature’.¹⁰⁰ The tutor, moreover, ‘cannot but extremely wonder, that Abraham being a wise man, should believe that the voice came from the great and wise God’.¹⁰¹ In Herbert’s view, all bloody sacrifice is contrary to God’s goodness; therefore, if a supposed revelation commands a bloody sacrifice, it must be a fake revelation. Furthermore, according to Herbert’s study, all kinds of bloody sacrifices

⁹⁷ Common notions, being the principles of the conscience, guides people to live moral lives. For this point, please see previous paragraphs of this section.

⁹⁸ *DV*, 308.

⁹⁹ The pupil stated ‘that God commanded Abraham to offer his son Isaac, as an holocaust, or burnt offering, and that Abraham without any dispute or enquiry whether the voice came from God, resolved presently to render a prompt obedience thereunto; and after he had pretended to his young men or servants, that he went about another business, and to his son that he meant to offer another sacrifice’.
Dialogue, 77-78.

¹⁰⁰ *Dialogue*, 78.

¹⁰¹ *Dialogue*, 78.

‘seem to have been from the Egyptians, and thence derived to the Hebrews’.¹⁰²

Since Herbert believed that grace and the common notions would definitely lead people to live moral lives and pave the way to salvation, he not only denied the human sacrifice as the word of God but also denied the doctrine of predestination. Denouncing the idea that ‘God has created and condemned certain men, in fact the larger part of the human race, not only without their desire, but without their knowledge’, Herbert commented, ‘this idea is so dreadful and consorts so ill with the providence and goodness, and even the justice of God’.¹⁰³ Moreover, he thought that ‘to declare that God has cut us off from the means by which we can return to Him ... is a blasphemy so great that those who indulge in it seek to destroy not merely human goodness, but also the goodness of God’.¹⁰⁴ Meanwhile, he suggested that ‘it is more charitable to suppose that the whole human race has always possessed in repentance the opportunity of becoming reconciled with God’.¹⁰⁵ Herbert’s correspondence with his family ally Sir Robert Harley confirmed the abovementioned point. Harley once said that ‘his Lordship [Herbert] says he loves a puritan but not a predestinator’.¹⁰⁶ And from their correspondence we see Herbert had nursed the idea since 1618, when he told Harley that ‘I think there is in every religion and ever was and ever wilbee enough taught to bringe a man to happiness eternall. For I must never beleeeve God’s providence which extends to man and every creature besides, only to faile in that point which is both the most necessary and to which the rest are subordinate’.¹⁰⁷ Herbert, moreover, added that ‘the notion is written in my hart that God’s providence is over all his works’ and ‘yf you aske mee how this is wrought, I may say I cannot

¹⁰² *Dialogue*, 220.

¹⁰³ *DV*, 299.

¹⁰⁴ *DV*, 300.

¹⁰⁵ *DV*, 299.

¹⁰⁶ Sir Edward Herbert to Sir Robert Harley, 1631, December 8. Ward, *The Manuscripts of His Grace the Duke of Portland*, 3–4:30.

¹⁰⁷ Sir Edward Herbert to Sir Robert Harley, 1618, June 8. Ward, *The Manuscripts of His Grace the Duke of Portland*, 3–4:9.

tell'; 'this is then the derivation of my belief'.¹⁰⁸

In Herbert's later years, when he was writing *De Religione Gentilium*, his opposition to the doctrine of predestination continued. In the opening of the work, he made it clear that he was opposed to the idea that 'those who had never heard of Christ were doomed to eternal perdition',¹⁰⁹ and the goal of his work was to prove that 'the best of the pagans, through God's infinite mercy, might be eligible for eternal salvation'.¹¹⁰ The doctrine of predestination, in Herbert's view, is contrary to the universal providence Herbert believed in. He stated that 'I could not conceive that the same God either could or would leave anyone deprived, either by Nature or by Grace, of the way to obtaining a happier state'.¹¹¹ In brief, since Herbert believed that both universal providence and special providence or common notions and grace would guide people to live moral lives and finally to salvation, he could not accept the doctrine of predestination.

Since grace shares the same destination with the common notions and its content should not be contrary to goodness, it could be argued that in Herbert's theory grace could be replaced by the common notions. Although Herbert wrote that by grace 'some new aspect of God is revealed, [and] we pass beyond the normal level of experience',¹¹² he also stated that 'if we do not possess a supernatural and miraculous sense we should be obliged to hold that God confined Himself to His universal providence, and disclosed Himself only through those faculties of faith and prayer which are implanted in every normal human being'.¹¹³ Moreover, when presenting the five religious common notions, Herbert asserted that 'in this connection the

¹⁰⁸ Ward, *The Manuscripts of His Grace the Duke of Portland*, 3–4:9.

¹⁰⁹ DRG, 53.

¹¹⁰ DRG, 54.

¹¹¹ DRG, 54. CF: 'How could I believe that a just God could take pleasure in the eternal punishment of those to whom he had never afforded a method of salvation?'. DRG, 54.

¹¹² DV, 311.

¹¹³ DV, 310.

teaching of Common Notions is important; indeed, without them it is impossible to establish any standard of discrimination in revelation or even in religion'.¹¹⁴ This assertion implies that we could establish the criterion of revelation and religion since we have common notions and common notions seems to be superior to revelation. Furthermore, after insisting that 'the only Catholic and uniform Church is the doctrine of Common Notions', Herbert said that if 'anyone receives some truth by revelation', 'he must use it as occasion warrant, remembering that unless he is entrusted with a message of interest to all, he should reserve it to himself'.¹¹⁵ Therefore, although theoretically both grace and common notions will guide people to live moral lives and although he stated that 'I do not hesitate to repeat that our actions are perfected and brought to completion only by Grace[,] yet under the guidance of the inner consciousness I maintain that the principles of good actions spring from Common Notions'.¹¹⁶ It is the statement of the supremacy of the common notions that led readers to think that he denied the existence or the value of revelation.

In Herbert's theory particular revelation or special revelation occupies a narrow scope. Since revelation is a particular message to a specific person, and since it could only be confirmed by the faculty of the receiver, the validity of revelation is confined to the receiver only and extends no further. People who receive revelation from others must account it 'not revelation but tradition or history', and hence, it is a probable truth to non-receivers.¹¹⁷ As Herbert said, 'the truth I have defined is based upon our faculties, while the truth of revelation depends upon the authority of him who reveals it'.¹¹⁸ Showing the same view, Herbert in *De Religione Laici* wrote that 'the Faith that regards the past [including the delivered revelations] is a firm belief in what is

¹¹⁴ DV, 289.

¹¹⁵ DV, 303.

¹¹⁶ DV, 311.

¹¹⁷ DV, 308.

¹¹⁸ DV, 308.

narrated, yet such as depends chiefly on human authority... and is more or less probable according to circumstances' since 'it is subject, furthermore, to no faculty [of men]',¹¹⁹

Although Herbert placed strict limits on the truths of revelation, it should be stressed that in his theory the help of particular revelation or grace is necessary for living a moral life and for acquiring truths, and to that extent the overall importance of revelation is not diminished. As we will see in section 2.2.2.3 'Conscience and Grace', Herbert provided two personal experiences of receiving help from grace, which will further confirm its importance in his theory.

2.2.2 Herbert's theory of conscience

Herbert was interested in the theory of Conscience; in *De Veritate* he stated that 'I am preparing an entire treatise on Conscience'.¹²⁰ Although Herbert seems never to have started this treatise, and although no related manuscript written by him has survived, he touched on the definition of conscience in his other works. Having discussed the relationship between the common notions and grace, this section deals with Herbert's theory of conscience as set out in his religious treatises *De Veritate*, *De Religione Laici*, *De Religione Gentilium*, and *A Dialogue between A Tutor and His Pupil*. It will in turn address Herbert's definition of conscience, the sources of the moral principles and their varied importance, the help provided by grace to conscience, and the connection between the conformity of individual conscience and salvation. Meanwhile, by discussing Herbert's theory of conscience and by comparing it with those of the English casuists I intend to show its two characteristics. (1) Herbert had a

¹¹⁹ *DRL*, 91.

¹²⁰ *DV*, 186.

different view on the sources of moral principles, and he deemed common notions, rather than Scripture and teachings of church traditions, to be the most reliable source – though this does not mean that he denied the value of Scripture and teachings of church traditions. (2) Herbert's theory of conscience was an extension of his theory of truth. Truths in his epistemological theory were obtained under the guidance and help of both universal providence and particular providence or common notions and grace, and thus were the functions of individual conscience – conscience obtained moral principles from the common notions, while it also relied on grace to save it from moral dilemmas. Similarly, just as the goal of his epistemological theory was to help people obtain salvation, so was it the goal of his theory of conscience.

2.2.2.1 The definition of conscience

Herbert defined conscience as 'the common sense of the inner senses' or 'the common consciousness of the inner forms of awareness'.¹²¹ This means that conscience belongs to the inner senses which constitute the second level of the four fundamental classes of faculty, the internal senses.¹²² Each sense has its faculty and each faculty is an 'inner power which develops the different forms of apprehension in their relation to the different forms of the objects'.¹²³ To describe conscience as the common sense or the common consciousness of men denotes that conscience holds the supreme role among the internal faculties and that 'conscience is only satisfied when all the faculties are in conformity [with their objects]'.¹²⁴ In other words, the object of the

¹²¹ *DV*, 183-184.

¹²² The four fundamental classes of faculty are natural instinct, the internal senses, the external senses, and discursive thought or reason. *DV*, 115.

¹²³ *DV*, 108.

¹²⁴ CF: 'In addition to the marvellous structure of the human system... there exists the most important principle of all, namely conscience'. Herbert, 184, 205. It could be said that there are numberless faculties. CF: 'There are as many faculties as there are differences of things and vice versa'. *DV*, 108.

conscience ‘is the conformity of all the other faculties’,¹²⁵ and conscience in practice is the guidance of our action ‘with the aim of reaching a decision concerning what we ought to do’.¹²⁶ In sum, as the highest inner faculty, conscience guides the use of the faculties and judges every particular action whether it should be done.¹²⁷ By the abovementioned definition Herbert agreed with the English casuists that conscience is both a rational faculty and an intellectual activity.¹²⁸

Herbert also agreed with the English casuists that conscience ‘has always been present in every man’ and that ‘it is imprinted on the hearts of all men’.¹²⁹ The existence of conscience, Herbert said, ‘is due to Nature or Universal Providence’.¹³⁰ Presenting the same viewpoint, in *De Religione Gentilium* Herbert maintained that ‘divine goodness gave the same intellect, freedom of will and other faculties to the pagans’;¹³¹ the human faculties, including conscience, are not exclusive to Christians only but belong to all human beings. Just as the English casuists maintained that conscience was implanted directly by God, Herbert stated that conscience is ‘a faculty which has been built into the soul by God to judge between good and evil’.¹³² Similarly, just as the English casuists did, Herbert depicted conscience as a witness since ‘no word or thought can escape its sway or be hidden from its gaze’. Conscience, meanwhile, is also an accuser or consoler because ‘its special function is to take pleasure in moral action and to induce a physical repugnance and remorse in the

CF: ‘All the internal forms of consciousness are subject to the faculty of conscience’. *DV*, 205.

¹²⁵ *DV*, 206.

¹²⁶ *DV*, 183-184.

¹²⁷ CF: ‘As I have often observed, we bring the Common Notions before its [conscience’s] judgement.’

CF: ‘The lawful use of the faculties depends on conscience’. *DV*, 206.

¹²⁸ This faculty could ‘be classified among the intellectual faculties, since it operates in the light of that category which discusses whether things ought to exist in a given way.’ *DV*, 184.

¹²⁹ *DV*, 184, 186.

¹³⁰ *DV*, 184.

¹³¹ *DRG*, 325. CF: ‘They [pagans] also attest to the signs of a good conscience, which are fortitude, faith, constancy and joy, whilst those of an evil one are fear, terror, sorrow and despair.’

¹³² *DV*, 326.

presence of evil'.¹³³ Conscience, therefore, became 'a guardian of divine justice' in our minds.¹³⁴

2.2.2.2 The common notions, biblical authority and the traditions of the church

Herbert discussed moral principles and moral judgement of conscience even though he did not refer to *synderesis* and *conscientia*, the two specific terms the casuists used to explain the composition of conscience.¹³⁵ According to Herbert, conscience as 'an agent or medium' receives moral principles derived from common notions, and 'by the high authority of the Common Notions' conscience 'examines not only what is good and evil, but also their different degrees'.¹³⁶ Clearly in Herbert's theory moral principles come from common notions. He maintained that 'we must believe that the Common Notions are the fundamental standards of good' and that 'we find great unanimity of opinion in moral philosophy since it is entirely composed of Common Notions'.¹³⁷ After the people received the common notions, Herbert said, 'Common Notions should be clearly arranged, so that they [people] might have a rule of conscience' – but he did not provide the method of arranging them.¹³⁸ Constituting the moral principles, common notions are the highest guidance of conscience, according to Herbert. Common notions are 'principles which it is not legitimate to

¹³³ *DV*, 184. CF: '[The conscience], therefore, when freed from errors and imperfections, gives virtuous people the greatest comfort and support, but torments the wicked with unspeakable horror and anguish.' *DRG*, 325. CF: 'so from a good conscience [there] arises a great comfort of the mind, and, on the contrary, those who consciously lead vicious lives always have dismal forebodings of punishment before their eyes'. *DRG*, 324.

¹³⁴ *DV*, 185.

¹³⁵ Herbert did mention the Greek word *synderesis* once in *De Religione Gentilium* when arguing that common notions are engraved in the hearts of all human beings, but he did not use the phrase to define or explain the content of conscience. *DRG*, 325.

¹³⁶ *DV*, 184. CF: 'It is to it [conscience] that all the common notions are referred'. *DV*, 184.

¹³⁷ *DV*, 192.

¹³⁸ *DV*, 188.

dispute; they form that part of knowledge with which we were endowed in the primeval plan of Nature' and 'Reason is the process of applying Common Notions as far as it can, and has nothing beyond them to which it can appeal'.¹³⁹ When conscience 'is troubled, whether its perceptions are right or not, [it] can reach a decision only by having recourse to the Common Notions'.¹⁴⁰

The common notions Herbert proposed correspond to the light of nature or the light innate of the English casuists. Both Herbert and Sanderson used the same term κοινὰ ἔννοιαι, i.e. common notions.¹⁴¹ Sanderson said that 'It has pleased God that certain propositions, and practical principles, which the Philosophers called κοινὰ ἔννοιαι' were implanted in the heart of every human being.¹⁴² 'These common Notions are that Law of God' and 'they have the same authority and estimation of the Law or of a Rule imposed by God upon us', Sanderson added.¹⁴³ Similarly, Herbert maintained that 'Common Notions, the κοινὰ ἔννοιαι of the ancients' are sources of moral principles and they 'are found in all normal persons; which notions are, so to say, constituents of all and are derived from universal wisdom and imprinted on the soul by the dictates of nature itself'.¹⁴⁴ Both Herbert and Sanderson maintained that God imprinted common notions on all people throughout history and the notions formed a very important part of moral principles.¹⁴⁵ The light of nature of the English casuists is equivalent to 'Nature or General Providence' in Herbert's theory (which is different from 'Grace or Special Providence'), and 'Common Notions are so called

¹³⁹ *DV*, 120-121.

¹⁴⁰ *DV*, 102.

¹⁴¹ 'Common Notions, the κοινὰ ἔννοιαι of the ancients, were sacred principles which could not be lawfully disputed'. *DV*, 125. CF: 'It has pleased God that certain propositions, and practical principles, which the Philosophers called κοινὰ ἔννοιαι ... should still remain, that so in our breasts and most inward parts, he might have Preachers of his will.' Sanderson, *Several Cases of Conscience*, 132.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ *DV*, 106, 118.

¹⁴⁵ *DV*, 118.

because they are understood by all normal men'.¹⁴⁶

As mentioned above, in *De Veritate* Herbert provided a theory of how to ascertain moral principles and their origin, the common notions. Herbert stated that every human being could know the common notions, including the common notions of moral principles, by their natural instinct, the highest level of human faculties. Moreover, Herbert stressed the importance of common notions and held that they were essential for human beings and that they were the foundation of the universe.

Since common notions are the foundation of the universe and are essential for human beings, the importance of them, when it comes to the sources of the moral principles of the human being, supercede those of other sources such as the Bible and church traditions. According to Herbert, the Bible is not as reliable as the common notions since individuals received the knowledge of it not through our own faculties but through the delivery of history. In other words, before the examination and confirmation of an individual's faculties the content of the Bible belongs to history and to the truth of probabilities. Herbert explained that 'all tradition and history, [or] everything in short that concerns the past' belongs to the category of the truth of probability, since they were not confirmed by our own faculties, and the certainty of such things could only 'depend on the authority of the narrator'.¹⁴⁷ In *De Religione Laici*, Herbert maintained that a religion known through historical tradition could only be probable because 'so many things can be added, exaggerated, or altered by the decision of anyone at all', and again he stated that the authority of such knowledge came from the narrators.¹⁴⁸ Moreover, 'granted that all things set forth by renowned authors were true, still these will not be your truths, but theirs who came to know

¹⁴⁶ *DV*, 126.

¹⁴⁷ *DV*, 314. CF: 'The Faith that regards the past is a firm belief in what is narrated, yet such as depends chiefly on human authority, and has reference to some epoch, and is more or less probable according to circumstances.' *DRL*, 91.

¹⁴⁸ *DRL*, 93.

these things by virtue of rightly conformed faculties'.¹⁴⁹

Herbert held the opinion that not everything in the Bible 'is endowed with equal authority' and suggested that the Bible contains different levels of truths.¹⁵⁰ In *De Veritate* he suggested amending the Bible since 'carelessness or the passage of time has allowed to creep into a sacred or profane book any passage which maligns God or calls in question those divine attributes which are universally recognised'.¹⁵¹ At the same time, he implied that people should 'charge its [the Bible's] interpreters with error, in that they have departed from the writer's meaning and even from the analogy of faith, since they have stated views which conflict with Common Notions'.¹⁵² Similarly, in *De Religione Laici* Herbert mentioned that some paragraphs of the Bible are controversial 'because some contend that there have been certain interpolations or excisions; because the original text, especially indeed the Hebrews, is ambiguous; because the authors are various, and in some places even discrepant'.¹⁵³ Moreover, Herbert said that some paragraphs of the Bible might be corrupted 'since the words recorded in Scripture of villains, women, beasts, nay of the devil himself, are slurred over, [and] clearly the sayings of even the best men cannot be considered divinely inspired at all times'.¹⁵⁴ Facing the fact that the Bible contains different levels of truths, including the corrupted paragraphs, Herbert thought that the question which remained is 'what in the Holy Bible is the very word of God, and further what is most necessary to salvation'.¹⁵⁵ In *De Religione Gentilium*, Herbert once became more straightforward by questioning the notions of the Fall and the doctrine of Original Sin in the Bible. He held that these notions contradicted God's benevolent nature, and

¹⁴⁹ DRL, 95.

¹⁵⁰ DRL, 99.

¹⁵¹ DV, 316.

¹⁵² DV, 316.

¹⁵³ DRL, 99.

¹⁵⁴ DRL, 99.

¹⁵⁵ DRL, 101. CF: 'it will be worth while, therefore, to inquire more thoroughly what in the Sacred Scripture may be called the pure and undisputable word of God'. DRL, 99.

asserted that ‘the principle of evil cannot be derived from Adam’ – though Herbert avoided claiming that these passages of the Bible held no authority, and wrote twice that ‘[he] shall leave it to the theologians to deal with the principle of evil and its derivation from the Fall’.¹⁵⁶

Since the truths in the Bible vary, Herbert thinks that they should be examined by individuals’ faculties before individuals accept them as the words of God. According to Herbert, the unexamined content of the Bible is similar to the knowledge of history and these truths ‘we shall find serve to confirm the divine attributes written in our hearts’.¹⁵⁷ When there is no conformity between our faculty and a historical statement, Herbert does ‘not think that any confidence can be placed in the statement’ and he ‘call[ed] those probable which are not yet self-evident’.¹⁵⁸ When ‘we read some story of past events which exhibit wisdom, courage, piety, justice and prudence, we may find that our analogous faculties, or Common Notions, are stirred to respond, so that we feel at peace with ourselves’.¹⁵⁹ In brief, a historical statement is a truth when it could be brought into harmony with our corresponding faculty; otherwise, it is not a truth. From his general statement it could be argued that when the words of the Bible are in conformity with human’s highest faculty, the natural instinct, these words could be viewed as common notions or the real words of God. Moreover, Herbert maintained that individuals had the right to examine any religious statements they heard from others or from history. In *De Religione Laici*, Herbert wrote that ‘mankind is given complete liberty regarding Faith about the past, and regarding doctrines proceeding from such Faith’; ‘whether he readily believes history ... whether he doubts it ... or whether he rejects it’, the individual ‘may reckon that he decides

¹⁵⁶ *DRG*, 281-282.

¹⁵⁷ *DV*, 318.

¹⁵⁸ *DV*, 318.

¹⁵⁹ *DV*, 317.

nothing save at the command of right reason' since 'the rational faculty which is for ever appropriate to every man is capable of deciding'.¹⁶⁰ Here an interesting issue may be raised: Herbert's theory might cause the problem that people might attain different opinions concerning a statement of history, since individuals' faculties might bring different judgements. However, this would not be the case for Herbert's theory. People would arrive at the same opinion as long as everyone used the same given faculties under the same conditions – this would be the outcome of universal consent. Furthermore, common notions and grace, or universal providence and particular providence, would guide people to attain the same truth, according to Herbert – this also means that Herbert held a unitary view of truth that all human beings can apprehend internally via their faculties.¹⁶¹

By analyzing Herbert's statements on the Bible, we see his view that it contains common notions, other lower levels of truths, and probable truths. After posing the question, 'what in the Holy Bible is the very word of God, and further what is most necessary to salvation', Herbert answered, 'here in the first place, surely, we find our catholic truths, which as the undoubted pronouncements of God, transcribed in the conscience, are to be set apart and preserved'.¹⁶² This means that the Bible contains the five religious common notions – in Chapter 10 of *De Veritate*, Herbert confirmed that the Ten Commandments are common notions 'since their injunctions are implicit in every kind of law and religion'.¹⁶³ Then, by reading the history of the Hebrews, individuals 'will find no small heap of miracles published among them – prophecies, rites, sacraments, ceremonies, and especially the religious cult of that nation'; Herbert suggested that people examine them so that 'what we call our catholic truths should

¹⁶⁰ *DRL*, 95-97.

¹⁶¹ In Herbert's theory, grace shares the same purpose and function with common notions. For this point, see sections 2.3.2.3 and 2.3.2.4.

¹⁶² *DRL*, 101.

¹⁶³ *DV*, 312-313.

thereby be more clarified, better expressed, more sanctified'.¹⁶⁴ Then there remains 'urged promises and certain special covenants, secret and allegorical allusions, nay even some expressions too concise or incoherent, and difficult to understand'.¹⁶⁵ Herbert thought that the remaining words would cause controversies and suggested that we view them as probable things whose certainties were based 'on the authority of the prophet'.¹⁶⁶

In *De Veritate* and *De Religione Laici*, Herbert tended not to have detailed analyses of any particular paragraph of the Bible since he was aware of the fact that his viewpoint might cause controversy or opposition.¹⁶⁷ In the opening of *De Veritate* Herbert stated that 'the work is published with the aim not of arousing controversy, but of closing it, or at any rate, making it unnecessary'.¹⁶⁸ Throughout the work Herbert did not refer to any specific work, any particular author or religious denomination, except in Chapter 11, 'On Probability', where he gave a general comment on the Bible. After stating that religious statements of the past were probable truths, Herbert maintained that 'I regard this Book [the Bible], in distinction from all other books, with profound respect' but then suggested people amend the Bible since the views of some paragraphs – again, Herbert in this treatise did not mention any specific paragraph – 'conflict with Common Notions'.¹⁶⁹ Similarly, when Herbert at the end of *De Religione Laici* anticipated a possible criticism of his work, that 'those of our country may say that I ought to speak more eloquently of the Holy Scriptures', he answered that 'no one thinks more nobly of them, for I have asserted strongly that the best laws for living rightly and happily, or eternally, are

¹⁶⁴ *DRL*, 101.

¹⁶⁵ *DRL*, 101.

¹⁶⁶ *DRL*, 101.

¹⁶⁷ The abovementioned Ten Commandments discussed in *De Veritate* is the only exception.

¹⁶⁸ *DV*, 74. CF: 'it is not at all to my purpose to write about any individual religion, and especially about those articles which are violently disputed'. *DRL*, 127.

¹⁶⁹ *DV*, 316.

delivered in the Scriptures, although this is not the place to discuss them all one by one'.¹⁷⁰

Although Herbert held the view that the Bible contains different levels of truth and even contains words contrary to the common notions, he neither excluded it from being the guide of individual's moral actions nor maintained that the Bible holds no authority. The Bible, as he said, was just a historical work, but after numerous deliveries and transformations, it had been mixed with other levels of truths and stories and thus had become less reliable than common notions. In *De Veritate* Herbert stated that 'the sacred scriptures, accordingly, occupy the highest place among books' and he found 'nowhere else a surer source of consolation and support'.¹⁷¹ These positive statements on the Bible could be more than a mere defence of Herbert from possible criticism since, as mentioned above, he held the view that the Bible contained paragraphs, such as the Ten Commandments, corresponding with the five religious common notions and may lead people to live moral lives.

In parallel with his view of the Bible, Herbert held the opinion that the teaching of church traditions is not as reliable as that of common notions. After Herbert proposed the five religious common notions in Chapter 9 of *De Veritate* – namely that 'there is a Supreme God', that 'this Sovereign Deity ought to be Worshipped', that piety 'is and always has been held to be the most important part of religious practice', that vices and crimes must be expiated by repentance, and that 'there is Reward or Punishment after this life' –¹⁷² he maintained that 'such, then are the Common Notions of which the true Catholic or universal church is built' while 'the church which is built of clay or stone or living rock or even of marble cannot be

¹⁷⁰ DRL, 127.

¹⁷¹ DV, 315-316.

¹⁷² DV, 291-302.

claimed to be the infallible Church'.¹⁷³ Moreover, 'the true Catholic Church is not supported on the inextricable confusion or oral and written tradition to which men have given their allegiance'.¹⁷⁴ Furthermore, Herbert asserted that 'anyone who courts uncertain doctrines in place of the sure truths of divine providence, and forges new articles of Faith, forsakes this [catholic] Church'.¹⁷⁵ This means that all church traditions in the world are inferior to the five religious common notions, and that the teaching of church traditions should comply with them. Arguing the same point in *A Dialogue between a Tutor and His Pupil*, Herbert stated that his five religious common notions were universal and that 'anything that contradicts the said principles must not by any means be admitted upon what pretence soever of faith'.¹⁷⁶

It might seem that Herbert denied the value of all religious institutions and all religious doctrines except the five religious common notions; in other words, the content of religion seems to become very narrow. Herbert anticipated this objection. In *A Dialogue* the pupil once asked 'will not my religion thus lie in too narrow a room?' and the tutor replied that we shall not waste our time on controversial doctrines and by these five notions alone we could live a moral life.¹⁷⁷ The tutor in fact did not directly answer the question but only seized his final destination in his mind: how to lead a moral life and attain eternal salvation. By the answer of the tutor to his pupil we see that Herbert, again, avoided commenting on any particular church

¹⁷³ CF: 'The only Catholic and uniform Church is the doctrine of Common Notions which comprehends all places and all men'. *DV*, 303. CF: 'Let us trust Divine Providence above any tradition'. *DRL*, 119.

¹⁷⁴ *DV*, 303.

¹⁷⁵ *DV*, 303.

¹⁷⁶ *Dialogue*, 6-7. 'Religion [based on the five common notions] being thus far stated, according to common reason and universal consent, you may descend afterwards to the particular faiths taught each where, (for they all move about these five centers) and then consider whether their additions consist with these common principles; for anything that contradicts the said principles must not by any means be admitted upon what pretence soever of faith.'

¹⁷⁷ 'Why should you require a more ample religion, when the five articles alone will give you a just exercise for your whole life, while thus you either think good thoughts, speak good words, or do good actions; and would you not think your time thus better employed, then in studying of controversy...?' *Dialogue*, 8.

doctrine.

However, Herbert set a positive value on religious institutions and their doctrines. First, he agreed ‘that immense comforts can be drawn from ecclesiastical doctrines that are scarcely adduced’.¹⁷⁸ Similarly, after he presented the five religious common notions in *De Veritate*, he stated that ‘I do not deny that sacred ceremonies can form part of religion’ and that ‘I find that some ceremonies are included in every religion and serve to embellish it; so far they are valuable’.¹⁷⁹ Furthermore, he suggested that ‘let the canons of Faith also, when they decree nothing opposed to these things [the common notions], deservedly to be added, as well as laws and rites which make for the people’s salvation’ – here, it suggests that Herbert agreed churches could regulate things indifferent on condition that they do not violate the five common notions.¹⁸⁰ Presenting the same viewpoint in *A Dialogue*, Herbert stated that individuals could accept ‘all pious doctrines among foreigners, as far as they are grounded on common reason, and concur with the precepts of a good life, taught in our church’.¹⁸¹ Secondly, Herbert had no doubt that some clergymen could guide people to live moral lives even though he attributed most superstitions to clergymen.¹⁸² In addition to listing some social functions of the clergymen,¹⁸³ Herbert stated that people should ‘revere everywhere priests of virtuous and exemplary life’.¹⁸⁴ Thirdly, Herbert maintained

¹⁷⁸ *DRL*, 129.

¹⁷⁹ *DV*, 302-3.

¹⁸⁰ *DRL*, 123-25.

¹⁸¹ *Dialogue*, 11.

¹⁸² Many scholars noticed Herbert’s criticising oppressions of priests but gave little credit or notice to his positive comments on the clergymen. See Champion, *The Pillars of Priestcraft Shaken*, 140–46; Harrison, ‘Religion’ and the Religions in the English Enlightenment, 61–85. Champion suggested that Herbert’s anticlericalism is a fruitful field to explore. Herbert’s criticism of priests can be found in his religious treatises, especially *De Religione Laici*, *De Religione Gentilium*, and *A Dialogue*. In *De Religione Gentilium*, for instance, Herbert claimed that all the evils of religion came from the priestly class and that the origin of all oppressions of clergymen in the world came from Egypt. See *DRG*, 60-61, 66, 205.

¹⁸³ According to Herbert, the clergymen ‘retained the right of opening and clothing the temples, of playing the part of public intercessors with God, of initiating the people into the truly holy rites, of delivering sermons from pulpits, of declaring the remission of sins by virtue of true penitence, of comforting the sick and burying the dead, and of receiving the offerings made them’. *DRL*, 111.

¹⁸⁴ *DRL*, 123.

that ‘faith in the historical narrative remains the Church’s prerogative’ although at the same time, as he treated the Bible, he asserted that ‘the liberty of passing judgement shall remain with mankind’.¹⁸⁵

Other illustrations supporting the fact that Herbert did not belittle the value of church traditions come from *De Religione Gentilium*. When arguing that pagans share the same conscience with Christians, Herbert stated that ‘not only are [there] some common notions, derived from universal wisdom (by which the world is governed), engraved on the conscience, but also those general axioms of theological or moral virtue, those rules and disciplines which correct the will and which determine what is good and just’.¹⁸⁶ This means that moral axioms and theological doctrines may guide the people’s action as well. Herbert, then, gave two examples:¹⁸⁷ ‘do as you would be done by’ and ‘when in doubt, choose the safest route’.¹⁸⁸ The first axiom is not only the teaching of the Bible Matthew 7:12 and Luke 6:31 but also a natural law widely recognised in the seventeenth century.¹⁸⁹ Describing it as ‘the very Law of nature’, Perkins stated that it concerns ‘that Equitie which we looke for at the hands of all men’.¹⁹⁰ Showing the same view, Benjamin Camfield, a contemporary who wrote a treatise on the Golden Rule, said that ‘it were written on the Tables of all our Hearts’ and ‘this Precept of our Blessed Saviour is no more than a plain Law of Nature, obliterated by evil habits and custom, revived and brought to light again by Christ’.¹⁹¹

¹⁸⁵ *DRL*, 99.

¹⁸⁶ *DRG*, 325.

¹⁸⁷ It is very rare that Herbert delivered specific illustrations.

¹⁸⁸ *DRG*, 325.

¹⁸⁹ Luke 6:12 reads ‘and as ye would that men should do to you, do ye also to them likewise’ while Matthew 7: 12 reads ‘Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets’.

¹⁹⁰ Perkins, ‘The Whole Treatise of the Cases of Conscience’, 186.

¹⁹¹ Benjamin Camfield, *A Profitable Enquiry into That Comprehensive Rule of Righteousness, Do as You Would Be Done By* (London: Printed for William Leach, 1679), 19. For this reference I am indebted to the following two works: Roy, ‘The Golden Rule as the Law of Nature, from Origen to Martin Luther’, in *The Golden Rule: The Ethics of Reciprocity in World Religions*, ed. Jacob Neusner and Bruce Chilton (London; New York: Continuum, 2008), 93–94; Neil Duxbury, ‘Golden Rule Reasoning, Moral Judgment, and Law’, *Notre Dame Law Review* 84 (2009): 1545–46. Jeffrey Wattles

The second theological doctrine is the axiom of tutorism of casuistry, suggesting that when in doubt, an individual should choose the safest option with the least possibility of sin.¹⁹² Although by this doctrine we could not see more about Herbert's view of other related doctrines such as probabiliorism or probabilism,¹⁹³ we know that he thought the basic doctrine of tutorism could guide people's conscience.¹⁹⁴

This section has shown that in Herbert's view the common notions were more reliable sources of moral principles than either biblical authority or the traditions of the Church. However, it is well worth noting that Herbert still attributed some importance to the Bible and church traditions. He held that both were able to guide people to solve their cases of conscience and live moral lives, though the importance of their contents and teachings may vary and should be carefully examined by the individual's faculties before receiving them. This belief challenges the impression that Herbert discredited the whole value of biblical authority and church traditions.

2.2.2.3 Conscience and Grace

It is of much importance that Herbert mentioned that a troubled conscience, in addition to having recourse to the common notions, should also seek the help of God's grace or particular providence. According to Herbert, 'conscience can be a great danger, either as a result of scruples which make it too tender, or as a consequence of

wrongly attributed Camfield's work to William Leach, which is quite misleading. See Jeffrey Wattles, *The Golden Rule* (New York: Oxford University Press, 1999), 78.

¹⁹² Slights, *The Casuistical Tradition in Shakespeare, Donne, Herbert, and Milton*, 13.

¹⁹³ Probabiliorism were shared by most Protestant casuists, recommending individuals follow the strongest possibility when they have a doubting conscience, while probabilism was usually held by Jesuits, suggesting individuals could choose any option of any possibility. See Slights, *The Casuistical Tradition in Shakespeare, Donne, Herbert, and Milton*, 14-15.

¹⁹⁴ CF: '7. In doubts I choose what is safest. 8. In probabilities, I prefer that which is the more reasonable, never allowing to any one a leave of choosing that which is confessedly the less reasonable in the whole conjunction of circumstances and relative consideration'. Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 11:359.

callousness, a condition which ends in impenitence'; thus, he suggested that 'we must not only have recourse to Common Notions in all our actions, but we ought to make use of certain spurs, vigilance, meditation and prayer, lest we fall in the midst of the way'.¹⁹⁵ Moreover, 'the sense of grace works within us, [and it is] a special aid which is entrusted to our inmost being'.¹⁹⁶

Grace or particular providence could guide people to solve their problems and strengthen their minds when they are trapped in moral dilemmas. Though Herbert, as analyzed before, did not provide a clear statement about how to obtain grace – in Chapter 10 of *De Veritate* he said only that grace could be received by using our prayers, vows, and our God-given faculties – he did provide two personal experiences of obtaining grace in his works and the first one lies in the first chapter of *De Veritate*. Herbert stated that he attained his theory of truth via both the guidance of God's grace and his God-given reason; this confession has received little notice from modern scholars but it can be an illustration of much importance. After saying that 'the multitude of sects, divisions, sub-divisions and cross-divisions in the schools hopelessly distract the wits of the learned and the consciences of the unlettered' and his own conscience as well,¹⁹⁷ Herbert resorted to 'no other hold but that of God' and prayed 'with sincere faith, with prayer, and with all the powers at my disposal by which I could invoke His Grace and Special Providence I besought His saving help'.¹⁹⁸ After the invocation Herbert then examined the contemporary works 'with a view to mastering the accepted doctrine of truth' and 'proceeded to collect definitions of truth from all the various authorities'.¹⁹⁹ He then found his theory of truth which

¹⁹⁵ *DV*, 187.

¹⁹⁶ *DV*, 165.

¹⁹⁷ *DV*, 75. Again, Herbert did not mention any specific sects or schools here since his work 'is published with the aim not of arousing controversy, but of closing it, or at any rate, making it unnecessary'. *DV*, 74.

¹⁹⁸ *DV*, 77.

¹⁹⁹ *DV*, 77.

was ‘the product both of Nature and of Grace’.²⁰⁰ It is worth noting that the manuscript of *De Veritate* dated 20 July 1619 shows that Herbert recorded this personal experience in writing and used it to develop his theory of conscience.²⁰¹ Thus, by this time Herbert had established both his theory of truth and his theory of conscience.

Herbert shared his second experience of particular grace at the end of his *Autobiography*, where he stated that he received the divine imprimatur of *De Veritate*. This story is very well-known partly because Herbert stopped writing his autobiography after recording this experience, and partly because some scholars, such as Horace Walpole and Sir Sidney Lee, have argued that it contradicts to his other statements on revelation or particular providence.²⁰² At the end of the *Autobiography*, Herbert expressed his worry that ‘as I knew it [*De Veritate*] would meet with much opposition, I did consider whether it was not better for me a while to suppress it’.²⁰³ Falling into a moral dilemma, Herbert stated that:

Being thus doubtful in my chamber, one fair day in the summer, my casement being opened towards the south, the sun shining clear, and no wind stirring, I took my book, *De Veritate*, in my hand, and, kneeling on my knees, devoutly said these words: “O thou eternal God, Author of the

²⁰⁰ *DV*, 77.

²⁰¹ The manuscript, BL Add MS 7081, includes 251 pages from fol. 1r to 126r written in Herbert’s own hand. The date 20 July 1619 and his signature are written in fol. 126r. The content, which is written in Latin is nearly identical to the first version of *De Veritate* published in 1624; this means that Herbert had developed most of his theory of truth and his theory of conscience by 1619. There is another manuscript kept in the British Library, BL Sloane 3957. The first page of the manuscript features Herbert’s autograph ‘ED 15 Dec 1622’. Although its content is identical to BL Add MS 7081, the manuscript was written clearly and in a very beautiful hand with few autograph corrections; this manuscript is of great value in deciphering the difficult hand found in BL Add MS 7081. However, the manuscript BL Sloane 3957 is an incomplete manuscript since it copied only the first eight chapters of *De Veritate*, excluding later chapters such as the chapters on the religious common notions and on revelation.

²⁰² Walpole wrote that ‘one of Lord Herbert’s chief arguments against revealed religion, is, the improbability that Heaven should reveal its will to only a portion of the earth, which he terms particular religion. How could a man [supposing the anecdote genuine] who doubted of partial, believe individual revelation?’ Walpole, *A Catalogue of the Royal and Noble Authors of England*, 1:190. For Lee’s comment, please see *AB*, 134n. There was also a debate about whether the experience of Herbert was written out of a sincere confession. See Eugene D Hill, *Edward, Lord Herbert of Cherbury* (Boston: Twayne, 1987), 114.

²⁰³ *AB*, 133.

light which now shines upon me, and Giver of all inward illuminations, I do beseech Thee, of Thy infinite goodness, to pardon a greater request than a sinner ought to make; I am satisfied enough whether I shall publish this book, *De Veritate*; if it be for Thy glory, I beseech Thee give me some sign from heaven; if not, I shall suppress it.”²⁰⁴

No sooner had Herbert spoken these words ‘but a loud though yet gentle noise came from the heavens, for it was like nothing on earth’; this noise comforted and cheered Herbert and he then stated that ‘I took my petition as granted, and that I had the sign I demanded, whereupon also I resolved to print my book’.²⁰⁵ The abovementioned two experiences of Herbert reveal that grace or particular providence, like the common notions, can help people solve their moral questions, and that anyone can invoke the help of God.²⁰⁶ Moreover, from his experiences and confessions we know that Herbert thought that grace, like the common notions, is sometimes needed to solve moral questions. Grace or particular providence, like the common notions or universal providence, would definitely guide people to live moral lives and then to salvation.²⁰⁷

2.2.2.4 The authority of conscience and salvation

Although Herbert and the English casuists put different emphases on the principles of conscience, Herbert agreed with them that conscience holds high authority. Conscience is responsible for the final moral judgement of a particular action; as Herbert put it, ‘I establish also a tribunal of divine Providence in conscience ... so that

²⁰⁴ *AB*, 133.

²⁰⁵ *AB*, 134.

²⁰⁶ ‘Men have been convinced, as I have observed above, that they can not only supplicate that heavenly Power but prevail upon Him, by means of the faculties implanted in every normal human being’. *DV*, 294. Even though Herbert had this statement, still we could not know how to invoke God’s grace by our faculties. From this statement we only know that he believes there is a bond between God and human beings.

²⁰⁷ The common notions, being the principles of the conscience, guide people to live a moral life. For this point, please see previous paragraphs of this section.

all that is holy and sacred may be here investigated as before a supreme court or parliament, beyond which there is no appeal'.²⁰⁸ As the highest inner faculty where 'all the causes of the inner faculties are pleaded', conscience is not only 'the court of the spirit and the body that is held in the hall of conscience, but the court of God'.²⁰⁹ Since conscience 'has full knowledge of Common Notions', it 'thus constitutes itself a guardian of divine justice'.²¹⁰ There was nothing unusual about Herbert's asserting this since the English casuists agreed with this view as well.

In Herbert's theory conscience was deeply connected with the individual's salvation. He stated that 'there is no hope of inner peace except when it [conscience] is brought into due conformity' and that 'in it, above all, the great contract of salvation is expressed and eternal blessedness assured, and it is to it that all the common notions are referred'.²¹¹ Conscience was connected with the individual's salvation because it possessed full knowledge of common notions, which, together with grace, would not only lead people to live moral lives but also guide people to salvation.²¹² As Herbert maintained, '[God], by giving us the means which proceed from His Common Providence to use for our salvation, will by His Grace enable us to enjoy eternal blessedness'.²¹³ Since conscience is guided by both universal providence and particular providence, human beings are destined to seek happiness and salvation.²¹⁴ Moreover, since human faculties are given by God and belong to

²⁰⁸ *DV*, 185.

²⁰⁹ *DV*, 185. Herbert in *The Life and Raigne of King Henry the Eighth* also described conscience as a court. See *L&R*, 447-48.

²¹⁰ *DV*, 185.

²¹¹ *DV*, 184.

²¹² As far as the question of salvation is concerned, universal providence and particular providence, or the common notions and grace, are more important than the teaching of the church traditions. Herbert stated that 'let us trust Divine Providence above any tradition' and maintained that 'if the means of salvation are not granted us elsewhere, we must admit that they have been disclosed to our hearts and made known in revelation'. *DRL*, 119.

²¹³ *DV*, 188. CF: 'We must accept as the gift of God the eternal Happiness that of necessity is bestowed on us together with the means by which it is attained'. *DV*, 164.

²¹⁴ 'You are composed in such a manner that you cannot but seek happiness. To this extent, you are not free'. *DV*, 143.

universal providence, ‘all the faculties, when they are in due conformity, serve to promote eternal salvation’.²¹⁵ As the highest faculty of human being, natural instinct, according to Herbert, ‘aims at Eternal Blessedness as its final end’;²¹⁶ in other words, ‘Eternal Blessedness will be the appropriate object of Natural Instinct’.²¹⁷ As the first faculty of the inner faculties, conscience, especially the satisfaction of it, is necessary for obtaining salvation.²¹⁸ In *De Religione Gentilium* Herbert likewise stated that ‘a good conscience, then, is the beginning of eternal salvation, and an evil one of future punishments’.²¹⁹ Furthermore, as a faculty, conscience is ‘to judge between good and evil’ and ‘produces the hope of a better life to come’.²²⁰

In practice Herbert held the view that the five religious common notions could secure the peace of conscience and guide individuals to salvation. Showing his concern that people are ‘encompassed by the terrors of divers churches militant throughout the world’,²²¹ Herbert advised people to ‘search out doctrines which are analogous to the internal faculties’; they would find then the five religious common notions which ‘are divinely inscribed in the understanding itself, and are subject to no traditions written or unwritten’.²²² The five religious common notions are the key to salvation since ‘in matters relating to eternal salvation no model of Faith, or even of Reason, is given, beyond what is common to all mankind’.²²³ Transcribed in the conscience by God, these notions can also protect us from the oppressions of religious sects and of clergymen.²²⁴ In *De Religione Gentilium* Herbert intended to show ‘how

²¹⁵ *DV*, 157.

²¹⁶ *DV*, 142.

²¹⁷ CF: ‘Every Common Notion, and indeed every lawful natural impulse, is directed towards it, and so all our inclinations point to this Eternal Blessedness’. *DV*, 143.

²¹⁸ ‘In it [conscience] all the faculties find their consummation’. *DV*, 157. CF: ‘Good, then, is the common object of the inner faculties’. *DV*, 189.

²¹⁹ *DRG*, 326.

²²⁰ *DRG*, 326.

²²¹ *DRL*, 87.

²²² *DRL*, 91.

²²³ *DRL*, 121.

²²⁴ *DRL*, 101.

the most enlightened pagans got out of the labyrinth [of the superstition designed by priests]' by keeping the five religious common notions in their mind.²²⁵ Similarly, in *A Dialogue* he stated that pagans, by following the five religious common notions, could 'find some means to keep a good conscience, and from thence to assure themselves of the attaining of a better life hereafter'.²²⁶

This section has shown that Herbert's theory of conscience shared many ideas with those of English casuists, including that conscience is a rational faculty and an intellectual activity, that conscience holds higher authority than worldly institutions, and that moral principles come from nature, Scripture, and church traditions. By establishing a strong connection between Herbert's thought and the ideas of his contemporaries, this section broadens our understanding of Herbert's thought and its connection with his historical context. This, however, is not to deny that Herbert developed his own distinctive theory of conscience. He prioritized the common notions as the most reliable source of moral principles, and gave inferior positions to Scripture and teachings of church traditions. Moreover, echoing his theory of truth, Herbert maintained that a troubled conscience should seek help from both the common notions and from grace, since together they will lead people to live moral lives and obtain salvation.

The key points of Herbert's theory of conscience are closely related to the arguments of the following chapters, all of which show that Herbert was deeply concerned with the moral dilemmas people met during this era, that he laid great emphasis on the freedom and authority of individual conscience, and that he held that it should not be oppressed by worldly institutions and authorities. Chapter 3 argues

²²⁵ *DRG*, 52-53.

²²⁶ *Dialogue*, 14.

that in Herbert's thought conscience weighs more heavily than the royal supremacy, and that this is best shown in Herbert's deep sympathy for the martyrs of the royal supremacy and its related enactments such as the Six Articles. Chapter 4 suggests that Herbert supported the authority of Parliament, since he believed that it could best protect the people's conscience from the oppression of the King's unlawful commands, such as non-parliamentary taxations and imprisonments without showing cause. Chapter 5 argues that Herbert agreed with the parliamentarians' argument that conscience grants that the people could lawfully resist a tyrant.

Chapter 3: The Controversy over the Royal Supremacy

One of the main cases of conscience of concern to Herbert was the impact of the royal supremacy on individual conscience, which he discussed in *The Life and Raigne of King Henry the Eighth* and 'On the King's Supremacy in the Church'. As we will see, the king's religious policies enacted and enforced in the name of the royal supremacy were not always compatible with individual subjects' religious beliefs, and hence may prove oppressive to individual conscience. For instance, the royal supremacy established by King Henry VIII brought many moral dilemmas to Catholics, a classic example being the case of Thomas More, who was sentenced to death due to his conscientious dissent from the King's claim to be the head of the Church. This kind of moral dilemma had its origins in the late medieval period and experienced transformations from that time to the early Stuart era.

During the early seventeenth century, James I and Charles I succeeded the royal supremacy established during the reign of Queen Elizabeth – according to which the Crown had the highest authority over church affairs, but no sacerdotal powers – and used their powers and prerogatives to control Church affairs and impose their religious policies. At the time Herbert was composing the two abovementioned historical works, many of Charles's ecclesiastical policies faced opposition from the so-called Puritans, especially his reform of the worship and theology of the Church – a notable example being the controversy over the placing and arrangement of 'altars' or the Lord's Table.¹ Moreover, the legality of the courts of High Commission and Star Chamber was called into question by Charles's opponents, who regarded them as

¹ Peter Marshall, *Reformation England, 1480-1642* (London; New York: Bloomsbury Academic, 2012), 195.

religious institutions lacking authority from the common law and Parliament.² This chapter argues that although Herbert supported the royal supremacy against the papal supremacy, he believed that the power of the Crown over the Church was limited. He stressed the sacerdotal powers kings should not assume in ‘On the King’s Supremacy in the Church’, and argued that the laws enacted by the royal supremacy should not coerce the individual conscience in matters of religious belief.

3.1 The royal supremacy and its moral dilemma

It was never easy to advocate the King’s supremacy and his powers over the Church without any scruple. In the Middle Ages clergymen often faced a dilemma: on the one hand, they were members of the Church who should obey the hierarchy with the pope as head; on the other hand, they were subjects in a specific country with civil magistrates as their governors. Since clergymen had this dual character, a dilemma existed when popes and kings had different opinions on religious or temporal matters.

From the late Middle Ages to the early sixteenth century the English kings had limited power over the Church, while popes, as the head of the English Church, still had the highest authority over it, including its theology and liturgy. Although the English royal supremacy had not yet been established, the kings kept enlarging their influence on religious issues by trying to reduce the revenue sent to Rome, filling vacant bishoprics and minor benefices with their nominees, and giving royal permission and guidance to convocations.³ In the 1530s King Henry VIII established the royal supremacy by expelling the powers of popes from England. When

² Jacqueline Rose, *Godly Kingship in Restoration England: The Politics of The Royal Supremacy, 1660-1688* (Cambridge: Cambridge University Press, 2011), 61.

³ Leo F. Solt, *Church and State in Early Modern England, 1509-1640* (New York: Oxford University Press, 1990), 8–9.

Parliament passed the Act in Restraint of Appeals to Rome in 1533, the pope lost his power of spiritual jurisdiction in England, and from then on he became the bishop of Rome with no more privilege than other bishops. The statute's preamble stated that the body politic of this 'empire' was divided into two realms, the English Church and the English State, both of which were governed by 'one supreme Head and King'.⁴ The subsequent statutes passed in the same year, the Act Restraining the Payment of Annates and the Act of Submission of the Clergy, strengthened Henry's supremacy.

Although the Henrician Reformation ended papal jurisdiction over both civil and religious matters in England, it did not remove the moral dilemma of the clergymen. When the clergymen spoke of things concerning spiritual matters on grounds of conscience, they still faced a predicament when the king disagreed with their opinions. In other words, although Henry VIII became the supreme head of the English Church, Christ was still the head of the universal Church, and the clergymen sometimes faced a conflict between their public duties for the royal supremacy and their private consciences. When King Henry, for example, demanded that the Canterbury Convocation admit that the cure of souls was 'committed' to the king in 1531, it reluctantly obeyed the King's order by stipulating that the clergy 'exercised the cure of souls by the king's authority'. The clergymen thus rephrased the demand of the King so that he would not assume any sacerdotal power while according him the highest authority over spiritual affairs.⁵ And when Thomas Cranmer, the archbishop of Canterbury, was asked by Henry why the consecration of the clergy should be exercised only by them, he answered ambiguously that God's law did not prohibit

⁴ J. R. Tanner, *Tudor Constitutional Documents, A.D. 1485-1603* (Cambridge: Cambridge University Press, 1922), 41–42. For the meaning of the word 'empire' in the statute, please see G. R. Elton, *England Under the Tudors*, 3rd ed (Hoboken: Taylor and Francis, 2012), 160–61; Mortimer Levine, 'Henry VIII's Use of His Spiritual and Temporal Jurisdictions in His Great Causes of Matrimony, Legitimacy, and Succession', *The Historical Journal* 10, no. 1 (1967): 3.

⁵ Solt, *Church and State in Early Modern England, 1509-1640*, 17.

kings from consecrating priests in the event that all clergymen were dead.⁶ Cranmer thus struck a delicate balance between satisfying the King's pleasure and retaining clergymen's sacerdotal power, by neither directly affirming nor directly denying that Henry had the arbitrary power to ordain priests. Both examples show the dilemma faced by clergymen when the King attempted to assume the priestly power.⁷ In fact, as soon as the separation of England from Rome was accomplished, the clergymen started to define the scope and limit of the king's power over the Church, foreshadowing the huge tension this topic would cause. The clergymen preached and published to define the king's power whenever a new successor took the throne during the Tudor and the Stuart dynasties.

During the reign of Elizabeth more decisive progress concerning the limits of the royal power over the Church was made, which was to stipulate that the Crown possessed no purely spiritual powers.⁸ When Parliament revived the Henrician Acts of Appeals, Annates, and Submission, the queen was termed supreme governor rather than supreme head by the new Act of Supremacy enacted in 1558, and her visitatorial power was delegated to and exercised by a Commission. The appendix of the royal injunctions in 1559 stated that 'her majesty forbiddeth all manner her subjects to give ear or a credit to such perverse and malicious persons... how by the words of the said oath it may be collected, that the kings or queens of this realm, possessors of the crown, may challenge authority and power of ministry of divine offices in the church'.⁹ One of the Thirty-Nine Articles, 'Of Civil Magistrates', stated the same point that 'we give not to our princes, the ministering either of God's Word, or of

⁶ Solt, *Church and State in Early Modern England, 1509-1640*, 39.

⁷ In 1536 Henry examined and commented on the Bishop's Book, while in 1539 he presided over the heresy trial of John Lambert. Solt, *Church and State in Early Modern England, 1509-1640*, 34-41.

⁸ J P. Sommerville, 'The Royal Supremacy and Episcopacy "Jure Divino", 1603-1640', *Journal of Ecclesiastical History* 34, no. 4 (1983): 549. Rose, *Godly Kingship in Restoration England*, 50-52.

⁹ Edward Cardwell, *Documentary Annals of the Reformed Church of England; Being a Collection of Injunctions, Declarations, Orders, Articles of Inquiry, &c. from the Year 1546 to the Year 1716*; (Oxford: Oxford University Press, 1844), 232-33.

Sacraments, the which thing, the Injunctions also lately set forth by Elizabeth our Queen, doth most plainly testify'.¹⁰ Supremacy was hence a jurisdictional rather than a sacerdotal matter. As John Jewel (1522-1571) put it, 'We commit the keys of the kingdom of heaven only unto the priest, and to none others'.¹¹ Ambiguous dialogue such as that between King Henry VIII and Archbishop Cranmer disappeared.

Although the king possessed no spiritual power, he had supreme authority over ecclesiastical matters. This means that the king had the power to enact laws regulating the exercise of spiritual power, to accept appeals from the people about the corrupt deeds of clergymen, and to appoint, depose, and restore bishops. By defining the king's power, the clergymen retained their spiritual powers, and the king regulated only the temporal side of things spiritual. The king could appoint bishops but not consecrate them; the king could deprive a bishop of his bishopric but not of his intrinsic spiritual power to minister. In other words, although the king could not give a bishop spiritual power, he could give him the external power to preach freely in his dominion.¹² If the king intended to amend doctrines or rites, he should do so through the hands of clergymen. And if the clergymen planned to enact a new canon, they should do so with the permission of the king. As for excommunication, the king could not excommunicate a subject, but he could enact a law such that a subject could be excommunicated if he or she disobeyed it. From the Elizabethan settlement to the reigns of James I and Charles I, the power of the king over the Church was situated

¹⁰ Solt, *Church and State in Early Modern England, 1509-1640*, 75–76; R. E Head, *Royal Supremacy and the Trials of Bishops, 1558-1725*. (London: Published for the Church Historical Society [by] S.P.C.K., 1962), 4. For the whole appendix, see Edward Cardwell, *Synodalia: A Collection of Articles of Religion, Canons, and Proceedings of Convocations in the Province of Canterbury, from the Year 1547 to the Year 1717* (Oxford: Oxford University Press, 1842), 71–72.

¹¹ Francis Mason, John Buckeridge, James Cooke, Richard Thomson, Lancelot Andrewes, and Robert Burhill all supported this stance. See Sommerville, 'The Royal Supremacy and Episcopacy "Jure Divino", 1603-1640', 549.

¹² Sommerville, 'The Royal Supremacy and Episcopacy "Jure Divino", 1603-1640', 550.

within this framework.¹³

However, by defining the powers of the crown and of the clergymen, the Elizabethan settlement still did not remove the moral dilemma of the clergymen. The potential for conflict between the demands of the king and the consciences of clergymen still existed, though it transformed into another kind of situation. In order to control ecclesiastical affairs, James I and Charles I needed a group of obedient clergymen to enforce their wills, and the way to achieve this was to make use of their prerogatives to influence their clergymen,¹⁴ something that often put pressure or brought problems to them. When clergymen tried their best to obey and flatter the King, they were usually criticized by others for sacrificing conscience for political expediency, since God, the lawgiver of conscience, was above the King. But when their deeds could not satisfy the King, they could be deprived of their bishoprics or their political positions.

Commissioned by King Charles I to write ‘On the King’s Supremacy in the Church’ and *The Life and Raigne of King Henry the Eighth*, Herbert faced the abovementioned dilemma. On the one hand, Herbert had his religious beliefs, such as the five religious common notions and his theory of truth based on the judgement of conscience. On the other hand, Herbert was seeking a higher position at court after he left the ambassadorship to France, and writing both works was the chance to obtain royal recognition. Thus both works should satisfy the needs or requirements of the King, including supporting the royal supremacy over the Church. Hence, the extent to which Herbert supported the King’s power over the Church in these two works provides the main theme of this chapter.

Although no extant material shows the reason Charles I commanded Herbert to

¹³ Rose, *Godly Kingship in Restoration England*, 61–64.

¹⁴ For some notable cases, see Head, *Royal Supremacy and the Trials of Bishops, 1558-1725*. For cases of Herbert’s friends, see section 3.3.

write these two works, the King's intentions can be surmised. A letter by Francis Bacon to Charles dated 22 October 1623 indicated that Charles had been interested in the history of King Henry VIII before he ascended the throne.¹⁵ At that time, having been commissioned to write the history of King Henry VII for Charles, Bacon also received the request to write the history of King Henry VIII; however, Bacon declined it since he 'did so despair of my [his] health this summer,'¹⁶ and several years later the task to write the history fell to Herbert, who had proved himself as a royal historian after completing *The Expedition to the Isle of Rhe* for Charles I in 1630. In addition to personal curiosity and interest in the history, Charles might have desired to learn the experiences of Henry's political achievements, including his control of Parliaments, managing the Church and State issues, and launching successful church reforms.¹⁷ Charles's intentions to bring reforms into the Church is evident from the dialogue between Bishop Wren, a chaplain of the King and an anti-Calvinist, and Bishop Andrewes in 1623. Wren said that 'for upholding the Doctrine and Discipline, and the right Estate of the Church, I have more Confidence of him [Charles], than of his Father'.¹⁸ After Charles became king, he did show much passion concerning religion, and put much effort into managing Church issues and maintaining its unity and order of worship.¹⁹ Holding that the Church issues belonged to the first place of

¹⁵ Jackson, "It Is Impossible to Draw His Picture Well Who Hath Several Countenances": Lord Herbert of Cherbury and The Life and Raigne of King Henry the VIII', 136; Francis Bacon, *The History of the Reign of King Henry VII and Selected Works*, ed. Brian Vickers (Cambridge: Cambridge University Press, 1998), 221n.

¹⁶ For the full content of Bacon's letter, see *The Works of Francis Bacon*, vol. 6 (London: Printed for C. And J. Rivington, 1826), 399.

¹⁷ Sponsors of seventeenth-century works on royal histories often nursed political motives. For example, Lord Burleigh commissioned William Camden to write the history of Queen Elizabeth so that he could obtain a clearer picture of the state records during the Elizabeth's reign. See Barbara J. Shapiro, *Political Communication and Political Culture in England, 1558-1688* (Stanford, California: Stanford University Press, 2012), 78–82.

¹⁸ Peter Marshall, *Reformation England, 1480-1642*, 195-196.

¹⁹ Richard Cust, *Charles I: A Political Life* (Harlow: Pearson/Longman, 2005), 99–103. Showing his passion on religion, Charles, for instance, chose to wear white rather than imperial purple at the day of his coronation. His bedchamber was also equipped with holy paintings, and he attended prayers every Sunday at the royal chapel. Kevin Sharpe, *The Personal Rule of Charles I* (London: Yale University Press, 1992), 280–81. Moreover, to compare Charles with his father, he was a man who 'clearly had a

princely office,²⁰ Charles I might be eager to know Henry VIII's experience of establishing the royal supremacy over the Church.

When Herbert was commanded to write 'On the King's Supremacy in the Church' in 1635, Charles I had ruled without the help of Parliament for six years. During the Personal Rule, Charles continued promoting the Laudian reform programme with the royal supremacy.²¹ Contrary to the style of James I, who tolerated varied practices in the Church, Charles used visitations and the ecclesiastical courts to impose changes on church interiors – it is worth noting that the Laudian reform focused mainly on the unity of worship, not on the unity of doctrines –²² without considering the scruples of some local parsons and ministers.²³ The reform programme consisted of some controversial regulations of worship, including that altars should be placed permanently at the east end of churches and surrounded by rails, that people should bow in the direction of the altar, and that people should receive communion kneeling at the altar rails.²⁴ In the eyes of Puritans, these regulations were popish rules; Puritans also disliked calling communion tables altars. Charles also used the Star Chamber to punish the disobedient subjects who opposed his Church policies. William Prynne, John Bastwick, and Henry Burton – all of whom were well-known anti-episcopal pamphleteers – were sentenced to life imprisonment and having their ears cropped in 1637.²⁵ In requiring Herbert to write 'On the King's Supremacy in the Church', Charles might have intended not only to seek Herbert's support for his

preference for elaborate religious ceremonies and baroque art'. See Norah Carlin, *The Causes of the English Civil War* (Oxford: Blackwell, 1999), 68.

²⁰ Sharpe, *The Personal Rule of Charles I*, 280.

²¹ There is a modern debate about who, Charles I or Archbishop Laud, should be responsible for the Church reforms of the 1630s. The traditional view held that the real initiator was Laud, while the revisionists, such as Kevin Sharp, thought that it was Charles. A moderate view is that they worked as a partnership. Cust, *Charles I: A Political Life*, 133–35.

²² Marshall, *Reformation England, 1480-1642*, 200; Sharpe, *The Personal Rule of Charles I*, 288.

²³ Marshall, *Reformation England, 1480-1642*, 208.

²⁴ Ibid., 199-208; Carlin, *The Causes of the English Civil War*, 64–66.

²⁵ Marshall, *Reformation England, 1480-1642*, 209.

religious reform programme, but also to test his view on it.

3.2 Royal supremacy versus papal supremacy

Both ‘On the King’s Supremacy in the Church’ and *The Life and Raigne of King Henry the Eighth* presented general support for the royal supremacy of English kings. Dated 14 May 1635, ‘On the King’s Supremacy in the Church’ was written at the command of the King,²⁶ and the title indicates its support for the supremacy. Its general support made Lee believe that it was a slavish and badly-written short treatise, and a part of Herbert’s campaign to attract royal patronage.²⁷ Similarly, commissioned by the King, Herbert in *The Life and Raigne* shows his support for King Henry VIII’s supremacy over the Church against the papal supremacy. In the general narration of Herbert, popes were often depicted as aggressive, selfish and ignorant, and thus ill-suited to claim the supremacy. For instance, when Pope Clement VII was preparing to attack King Henry by asking for the help of Charles V, the emperor finally disappointed him, and Herbert said that the Pope was in fact deceived.²⁸ Also from Herbert’s record, when Pope Paul III succeeded in 1534 and prepared to adopt measures against Henry VIII – including excommunicating Henry, depriving him of his realm, forbidding allegiance to his subjects, dissolving the leagues of princes, commanding the clergy to depart from England, and even encouraging nobles to wage wars against Henry – the King, having heard of so many weapons against him, did not express any anxiety but still entertained his friendship with Protestant princes.²⁹ Herbert gave readers the impression that the King enjoyed his supremacy with the support of the people, while popes tried everything to regain supremacy but gained nothing in the end. This section will show that Herbert

²⁶ KSC, 183.

²⁷ AB, 143.

²⁸ L&R, 373a. In the work the sequence of page numbers 369-404 was repeated; hence, I present the first sequence as 369a-404a and the second as 369b-404b.

²⁹ L&R, 394a-395a.

supported the royal supremacy against papal supremacy, and that his grounds fitted the main arguments proposed in the Henrician Reformation. It will also show that Herbert used his philosophical theory presented in *De Veritate* to justify his support, revealing that Herbert applied his philosophical theory to *The Life and Raigne*. However, a close analysis of Herbert's support for the royal supremacy against papal supremacy will further reveal that this support was in fact limited, contrary to Lee's statement that his treatises aimed only to flatter the King.

'On the King's Supremacy in the Church' and *The Life and Raigne* used different approaches to defend the royal supremacy. In the opening of the former treatise Herbert stated that his arguments were based on the Old Testament while in the latter work he showed his views through a fictional speech made by a member of Parliament who argued according to 'common reason' and 'without insisting upon any thing urg'd out of either Testament, or controverted by the theologians of this time'.³⁰ Herbert adopted these two different approaches to argue his points at nearly the same time; 'On the King's Supremacy in the Church' was dated 14th May 1635 while the fictional speech in *The Life and Raigne* was added after he had finished the first draft, i.e. during 1634-1638.³¹ Although it is not certain which work was completed first, Herbert composed them with different purposes. 'On the King's Supremacy in the Church' was mainly an extract of Bishop Andrewes's *Tortura Torti*,³² and it was King Charles who asked Herbert to write it and present it to Archbishop William Laud. As mentioned in the first section of this chapter, the King might have expected to see Herbert's strong support of the royal supremacy and the Laudian reform programme.

³⁰ *L&R*, 363.

³¹ Christine Jackson, 'Lord Herbert of Cherbury and the Presentation of the Henrician Reformation in His Life and Raigne of King Henry the Eighth', *Seventeenth Century* 28, no. 2 (2013): 154. I confirmed this point when I had access to Herbert's manuscripts, i.e. MS Jesus College 71-74, kept in the Bodleian Library, in the summer of 2016.

³² See Hutcheson's introduction, *KSC*, 183.

As I will argue in the next section, Herbert in fact carefully discussed his points perhaps because he intended not to cause any displeasure to the King and the Archbishop. In the *The Life and Raigne* Herbert had no such reservation, and he was writing the work for more general readers. By arguing his points according to common reason with some historical illustrations, Herbert's fictional speeches intended to appeal to every reader's reason to consider the priority of the royal supremacy.

Before further analysing Herbert's approaches to supporting the royal supremacy, it is worth noting that there had been basically four ways to defend royal supremacy since the Henrician Reformation, and these arguments were continuously used over the following century. The first approach was to contend that the King, as the head of the body politic, should logically be the head of the Church of his realm. Meanwhile, Christ was the head of the universal Church.³³ Stephen Gardiner (1483-1555), Bishop of Winchester, was of this opinion. This approach first proclaimed the independence of a particular church, and then justified the king having the headship over everything in that particular realm. The first defence was strengthened by the second argument that the specific regulations of worship, such as the place and the time, were not specified by divine law.³⁴ Since the details of the rites and ceremonies were not fixed in the Bible, these things were in fact *adiaphora* (or indifferent things), and hence the king had the privilege to decide and have worships practiced uniformly, decently, and piously in his realm. Thomas Starkey (1495-1538) argued this point in his *Exhortation to the People*. The third defence was to accuse papal supremacy of being an invention that was not part of the primitive Church. By reinterpreting church history, the royal supporters tried to prove that papal supremacy was *iure humano* rather than *iure*

³³ Rose, *Godly Kingship in Restoration England*, 29.

³⁴ Ibid., 30.

divino. Popes acquired their supremacy, as royal almoner Edward Foxe (c.1496-1538) argued, due to the negligence of some emperors, or, as Thomas Starkey maintained, by usurping their power.³⁵ This kind of accusation was not new, but still it reinforced the defence of royal supremacy.³⁶ Under such an argument, popes were just bishops of Rome, not the heads of Christendom. The fourth argument claimed that royal supremacy was itself ancient. By quoting texts of the Bible, especially verses about Israelite kings, defenders maintained that the royal supremacy was a biblical doctrine,³⁷ and that the aim of the Henrician Reformation was simply to restore the lost royal supremacy. The works of Bishop Gardiner and Edward Foxe (1496-1538) contained such arguments.³⁸

Herbert used this fourth argument in his ‘On the King’s Supremacy in the Church’ to justify the claim that kings rather than popes were entitled to the supreme authority over both temporal and spiritual matters. By introducing many examples of Israelite kings such as David, Solomon, Asa, Iosaphat, Joas, Ezechias and Josias, he first argued that ‘noe Change of Religion, during the Reigne of their Kings did follow, which was not procured by their immediate power’;³⁹ it was kings who held authority over spiritual matters from the beginning of church history.

In addition to showing the ancient nature of the royal supremacy, Herbert then added other arguments that were not extracted from *Tortura Torti* to justify the king’s claim to supremacy. He maintained that it was unsafe to ‘diuide the people, between temporall, and spirituall obedience, or suspend them, betwixt the Terroures of a secular death, and Eternall punishments’, and that it was also dangerous that ‘a Subject

³⁵ Rose, *Godly Kingship in Restoration England*, 31.

³⁶ Ibid., 30.

³⁷ Ibid., 32.

³⁸ Andre A. Gazal, *Scripture and Royal Supremacy in Tudor England: The Use of Old Testament Historical Narrative* (Lewiston, N.Y. ; Lampeter: E. Mellen Press, 2013), 69–73, 79–81.

³⁹ KSC, 184.

should partake a supreme Authority with them [kings] in Ecclesiasticall Affayres'.⁴⁰ The subject Herbert referred to was the pope, who was 'obnoxious' and 'may sometymes want the Power, and sometymes the meanes of giuing that Order'.⁴¹ This criticism of the popes was later enlarged in *The Life and Raigne* and became a more solid argument based on the judgement of 'common reason'. Revealing the same concern for the dilemma of choosing between popes and kings, Herbert said, through a fictional speech, that there was no peace 'if the Secular Magistrate command one thing and the Spiritual another'.⁴² Moreover, 'it will be dangerous to Constitute him [pope] our Supreme Judge' or 'Arbiter of the Temporall Causes betwixt us, and any other Christian Prince', he insisted, since popes were often selfish and greedy and deeply involved in political strife, of which the Babylonian Captivity of the Papacy was an example.⁴³ Furthermore, Herbert claimed in another passage that 'the Papal Authority was first derived from the Emperors of those times, and not from Christ,' a claim that echoed the first argument of 'On the King's Supremacy in the Church' that the Pope has no authority from the primitive church.⁴⁴

In *The Life and Raigne* Herbert raised two additional points to support the royal supremacy against the papal supremacy: the distance between England and Rome and the pope's invention of new religious articles. By the first point Herbert meant that because of the great distance 'people had rather let fall their Sutes, then be at the cost of bringing their Witnesses with them to so remote a Place, as neither their health or means can reach unto'.⁴⁵ In brief, the royal supremacy could bring more justice to

⁴⁰ KSC, 185.

⁴¹ KSC, 185.

⁴² L&R, 363.

⁴³ 'But this also evident, since the French and Spaniard so constraining him [the Pope] of either side that hee must submit to the stronger, or suffer such Imprisonment and outrages as hee hath lately done' L&R, 365. The Babylonian Captivity of the Papacy refers to the period from 1309 to 1376 when the French crown controlled the papacy and seven popes reigned at Avignon, not Rome.

⁴⁴ L&R, 391a.

⁴⁵ L&R, 394.

people's lawsuits than the papal supremacy. By the second point Herbert meant that since popes ignored 'general Notions both written in our hearts, and Received in all Religions', they were not entitled to the supremacy of spiritual affairs.⁴⁶ Though Herbert did not specifically state any article which was an invention of popes, he seemed to imply that popes ignored the five religious common notions, which comprised the foundation of religion and were ingrained in the hearts of every human being.

It is reasonable to expect Herbert's arguments for the royal supremacy to be unique, since his unusual and controversial religious common notions were based on the same common reason. Quite to the contrary, however, Herbert's arguments for the royal supremacy corresponded with arguments widely accepted in the Henrician Reformation. First, arguments about the corruption of popes were not new in English history, and had been used for example by the early reformer John Wycliffe (c. 1331-1384) and his followers the Lollards, who denied the papal supremacy by attacking the pope's religious abuses. In the sixteenth century, the hatred of the English people towards popes was no weaker than that of the German people, and they resented a pope who drained their money for his own worldly pursuits.⁴⁷ Royal supporter Thomas Starkey (c. 1498-1538) in his *A Dialogue between Pole and Lupset* criticized the pope's usurpation of the power of Convocation to satisfy his greedy needs, and also called for greater autonomy for the English Church by restraining the pope's authority to appoint bishops and the right of appeal.⁴⁸

Herbert's argument based on the great distance between England and Rome was also not new. In fact, the Act in Restraint of Appeals (1533) presented the same reason.

⁴⁶ *L&R*, 366.

⁴⁷ Philip Lee Ralph et al., *World Civilizations, Their History and Their Culture*, 9th ed., vol. 1 (New York: W.W. Norton, 1997), 690.

⁴⁸ Neal Wood, *Foundations of Political Economy Some Early Tudor Views on State and Society* (Berkeley: University of California Press, 1994), 149–50.

It stated that appeals to Rome over matters of wills, marriages and divorces and tithes and church offerings led

not only to the great inquietation, vexation, trouble, costs, and charges of the King's Highness and many of his subjects and resiants [residents] in this his realm, but also to the great delay and let to the true and speedy determination of the said causes, for so much as the parties appealing to the said court of Rome most commonly do the same for the delay of justice: And forasmuch as the great distance of way is so far out of this realm, so that the necessary proofs nor the true knowledge of the cause can neither there be so well known nor the witnesses there so well examined as within this realm.⁴⁹

This content corresponded exactly with the argument concerning distance in Herbert's fictional speech, which purported to be an address for King Henry VIII before his decision on the separation of Rome.

Although the arguments Herbert presented were not new, it was of much importance that they were justified by the epistemological theory presented in *De Veritate*. This fact not only confirms the close connection between *De Veritate* and *The Life and Raigne*, but also shows that Herbert intended to gain more publicity for his philosophical theory through his historical work. The fictional speech was given by an anonymous member of Parliament, and before he made his points, he said that he 'shall according to common reason' consider the supremacy question 'without insisting upon any thing urg'd out of either Testament, or controverted by the Theologians of this time'.⁵⁰ While, strictly speaking, the phrase 'common reason' was not used in *De Veritate*, it is very likely that this speech was an application of Herbert's philosophical theory, for four reasons. First, he mentioned the religious common notions written in every human being's heart in the latter part of the same

⁴⁹ Tanner, *Tudor Constitutional Documents, A.D. 1485-1603*, 1922, 42–43.

⁵⁰ *L&R*, 363.

speech, and said that he intended to present uncontroverted points without resorting to any authority.⁵¹ Both the religious common notions and arguments based on individual's judgement rather than on any particular authority were characteristics of Herbert's theory of truth.⁵² Secondly, the meaning of 'common reason' was close to that of a human 'faculty',⁵³ which was a more accurate term in Herbert's theory, and among four fundamental faculties there was natural instinct, the highest class of all, which conformed with the common notions.⁵⁴ It was likely that Herbert, in order not to let readers notice the application of his theory in the work or not to use any philosophical term, chose to use 'common reason' to supplement 'faculty'. Thirdly, the term 'common' also had a specific meaning in Herbert's philosophical system. By 'common' he meant that they were 'shared by every man and could be excited by every type of object', and if one principle was in the highest degree common, it was common to all men and was common even beyond our species.⁵⁵ Finally, the 'common reason' was used many times in Herbert's *A Dialogue between a Tutor and His Pupil* when he argued the prevalence of the five religious common notions.⁵⁶ Hence, Herbert did not use the phrase 'common reason' in *The Life and Raigne* without philosophical implications.

Since Herbert justified the royal supremacy against the papal supremacy by his theory of truth, his justifications could be viewed as universal truths, according to his theory. The 'common reason' explained above implied that Herbert's justifications could be obtained by every 'normal human being,' as Herbert wrote in *De Veritate*.

⁵¹ *L&R*, 366. CF: 'My reflections are free of authority and side no party and treat issues in the light of my independent judgment.' *DV*, 73.

⁵² CF: 'I desire the reader to know that my philosophical reflections are free of authority, [and] that I side with no party'. *DV*, 73.

⁵³ 'By faculty I mean every inner power which develops the different forms of apprehension in their relation to different forms of the objects'. *DV*, 108.

⁵⁴ *DV*, 116.

⁵⁵ *DV*, 126.

⁵⁶ *Dialogue*, 6-7, 11, 78. For illustrations, see the second section of chapter 2 where I have cited some sentences of this work.

Furthermore, if they could be obtained by everyone, they were, actually, widely accepted and left no room to be controverted. And if they were widely accepted, they hence enjoyed general consent, and thus were truths.⁵⁷ In brief, that the royal supremacy had its legitimacy, while the papal supremacy did not, was a truth that could be attained by anyone through the use of common reason.

After the above discussion it may be tempting to ask whether Herbert blithely assumed the law of Parliament, the Act in Restraint of Appeals, to be the representation of universal consent without actually examining it. In other words, the question is whether Herbert accepted every law of Parliament as universal truth. The answer, however, is negative since Herbert examined every law of Parliament in the reign of Henry VIII and gave them different comments. When Herbert mentioned the Six Articles, which were enacted in 1539 and reaffirmed the Catholic doctrine of transubstantiation, he denounced it as a law ‘called by some the Bloody Statute’ and as a law prejudicial to individual’s liberty of conscience.⁵⁸ This illustration shows that Herbert judged laws according whether their content could pass the examination of the common reason of all human beings. This confirms the above argument that Herbert used his philosophical theory as support for the justifications presented in the Act in Restraint of Appeals.

To compare the deistical controversy Herbert was involved in with the supremacy controversy presented by him, the latter was obviously less controversial since many points were close to the general opinion in that time in England. However, his presentation of the royal supremacy against the papal supremacy can still shed light on Herbert’s philosophy. Whereas the scholar W. R. Sorley said in 1894 that

⁵⁷ Herbert recognised whatever is universally accepted as the truth and thought that his theory was derived from universal consent or a theory with which every normal human being will agree. For his universal consent, see *DV*, 77, 117-21, 295.

⁵⁸ *L&R*, 446-48.

Herbert applied his theory of common notions only to religion,⁵⁹ this chapter has confirmed that Herbert also applied it to the supremacy controversy in *The Life and Raigne*, and that he intended to disseminate his philosophical theory to more general readers.

Herbert's support for the royal supremacy was justified mainly by the need to protect the people against the popes' corruption, their invention of new religious articles that contradicted the five religious common notions, and the distance between England and Rome. This meant that the royal supremacy should be supported because the alternative, the papal supremacy, was worse, not because the royal supremacy itself could secure the happiness of the people. In brief, Herbert provided negative support for the royal supremacy. This finding will also echo the main arguments of the following two sections: the King's power over the church was limited and the royal supremacy weighed less than individual conscience.

⁵⁹ W. R. Sorley, 'The Philosophy of Herbert of Cherbury', *Mind* 3, no. 12 (1894): 506.

3.3 The scope and limit of royal power over the Church

Following the demonstration in the previous section of Herbert's support for the royal supremacy against the papal supremacy, this section investigates Herbert's views of the scope and limit of the royal supremacy over the Church. It will show that although 'On the King's Supremacy in the Church' was composed at the command of King Charles I, its support for the king's power over the Church was limited, in two respects: first, Herbert agreed with the contemporary views that kings had no priestly powers; and second, Herbert stressed that kings had no power to change some fundamental doctrines of religion.

As mentioned above, Herbert wrote 'On the King's Supremacy in the Church' and *The Life and Raigne of King Henry the Eighth* in the 1630s when Stuart kings tried to use royal prerogatives to influence or even control clergymen and courtiers. To gain a prominent position at court or at the Church often meant that one could not be the 'rashheadie preachers' James denounced in his *Basilikon Doron*.⁶⁰ During the reign of Charles I, the King cooperated with William Laud to control the matters of the Church, protect royal supporters such as Richard Montagu and the Duke of Buckingham,⁶¹ and attack the disobedient, among whom George Abbot, the Archbishop of Canterbury, was a notable case.⁶² Facing the repressive climate of the Stuart reign, people sometimes had no alternatives but to either obey the command of kings and receive preferment, or obey the voice of conscience but suffer possible punishment.

⁶⁰ Henry Morley, *A Miscellany Containing Richard of Bury's Philobiblon, the Basilikon Doron of King James I.; Monks and Giants* (London: G. Routledge, 1888), 92–93.

⁶¹ Solt, *Church and State in Early Modern England, 1509-1640*, 169–76.

⁶² Head, *Royal Supremacy and the Trials of Bishops, 1558-1725*, 50–58. For the other two cases of Lord Keeper Williams, who lost the favour of the King, and Bishop Goodman, who refused to endorse the 1640 canons, see *Ibid.*, 59–72.

Before Herbert accepted the commissions to compose his works, he had witnessed the abovementioned moral dilemma from the experiences of his family friend John Donne (1572-1631) and of Bishop Lancelot Andrewes (1555-1626), the ‘learned Andrewes’, as Herbert called him.⁶³ Both men were invited to preach before King James I, but in each case the invitation was in fact a double-edged sword, bringing them either political enhancement or political downfall. Both of them, at least temporarily, chose to obey faithfully the king’s order and to show their support for the King’s supremacy and the King’s favourite theory of the divine right of kings. In the first case, John Donne, who was confident of acquiring a position like the embassy to Vienna his friend Henry Wotton (1568-1639) held, had long been searching for a position at court, but his early career had proved unpromising. While his work *Pseudo-Martyr* (1610), in which he spoke against the Roman Catholic Church during the Oath of Allegiance controversy, had impressed King James, Donne was still waiting for a position in the State, and he did not become an Anglican preacher as James I suggested.⁶⁴ However, he finally chose to convert to Anglicanism from Catholicism in 1615 after his hope of gaining a position in the State had perished, and he told the King that he was willing to follow the directions the King had given before. From then on Donne’s career in the Church began.⁶⁵ Throughout Donne’s career, his *Anniversaries* (1611-12) lamenting the death of the daughter of Sir Robert Drury (1575-1615) with a thousand lines of verse, his *Epithalamion* (1613) celebrating the scandalous marriage of Robert Carr, first Earl of Somerset (1587-1645)

⁶³ Jeanne Shami, ‘Kings and Desperate Men: John Donne Preaches at Court’, *John Donne Journal: Studies in the Age of Donne* 6, no. 1 (1987): 9–21. Paul A. Welsby, *Lancelot Andrewes 1555-1626* (London: S.P.C.K, 1958), 203. Herbert mentioned ‘the learned Andrewes’ twice in his works. See KSC, 184; L&R, 381a.

⁶⁴ David L Edwards, *John Donne: Man of Flesh and Spirit* (London; New York: Continuum, 2001), 63–82.

⁶⁵ Edwards, *John Donne: Man of Flesh and Spirit*, 96-7.

and Frances Howard (1590-1632),⁶⁶ his *Pseudo-Martyr* and his defence of King James's *Directions to Preachers* (after receiving the place of Dean of St. Paul's in 1621) were often criticized as decline or degeneration, some of which he admitted to.⁶⁷ Both Robert Drury and Robert Carr were Donne's former patrons, and Donne had paid a high price for their favour, though modern scholars have also noticed that he had some scruples when he was doing so.⁶⁸ In the second case, a study by Paul Welsby has argued that Andrewes's 'great moral mistake of his life ... was due almost entirely to exaggerated respect for monarchy, both in theory and in the person of James I'.⁶⁹ Moreover, Welsby pointed out that Andrewes was more submissive to the King after he was appointed Bishop of Chichester and Lord Almoner in 1605.⁷⁰ Likewise, Maurice Reidy has argued that during the Oath of Allegiance controversy of 1606 Bishop Andrewes reluctantly but faithfully wrote two works, *Tortura Torti* and *Responsio ad Bellarminum*, for James.⁷¹ After reading Andrewes' *Tortura Torti*, James promoted Andrewes to Bishop of Chichester. Afterwards, Andrewes became a firm supporter of James's religious policies,⁷² and of the theory of the divine right of monarchy, despite having shown his disagreement with it in his earlier work, the *Pattern of Catechistical Doctrine*.⁷³

⁶⁶ Before they got married, Frances Howard was already married to the young Earl of Essex. The divorce case was then referred to a committee, but George Abbot, the Archbishop of Canterbury, opposed this case while the King favoured it. It was said that James helped Carr by adding some obedient bishops, Lancelot Andrewes included, into the committee and finally permitted the divorce. Edwards, *John Donne: Man of Flesh and Spirit*, 87-8.

⁶⁷ His *Anniversaries* was criticized by Ben Jonson, Herbert's lifelong friend, as 'full of Blasphemies' for overemphasizing the death of this obscure girl. Edwards, *John Donne: Man of Flesh and Spirit*, 84-6.

⁶⁸ Shami, 'Kings and Desperate Men: John Donne Preaches at Court', 9; Annabel Patterson, 'Misinterpretable Donne: The Testimony of the Letters', *John Donne Journal*, no. 1 (1982): 39-54.

⁶⁹ Welsby, *Lancelot Andrewes 1555-1626*, 203-4.

⁷⁰ *Ibid.*, 204.

⁷¹ Maurice Francis Reidy, *Bishop Lancelot Andrewes, Jacobean Court Preacher* (Chicago: Loyola University Press, 1955), 7-10.

⁷² An example is shown in footnote 66 of this chapter.

⁷³ It is worth noting that propagating the theory of the divine right of monarchy is not equal to flattering the king since it can be used either as a theory enhancing the authority of kings, or as a theory limiting the power of kings. This theory is quite common in the early seventeenth-century. See Conrad Russell, "Divine Rights in the Early Seventeenth Century," in J. S. Morrill et al. ed., *Public Duty and*

When Herbert wrote ‘On the King’s Supremacy in the Church’ and *The Life and Raigne*, he must have been confronting the same kind of pressure Donne and Bishop Andrewes experienced, and he had good reasons to submit himself to the King’s demand. Having lost his office as ambassador to France, Herbert was as eager to gain a position at court as Donne had been. Although he was created the Baron Herbert of Cherbury in 1629 and completed *The Expedition to the Isle of Rhe* in 1630 in defence of the military failure of Duke of Buckingham in 1627, he still longed for a higher position. Holding that Herbert’s historical treatises were of little value, Sir Sidney Lee assumed that Herbert did submit himself to the King, and that as a result he gained a ‘long-sought-for place’ on the Council of War in 1632.⁷⁴ However, this was not necessarily the case, and in fact Lee’s statement on the date Herbert acquired the position is incorrect, as Kimmelman found that Herbert had already obtained the said position in 1625.⁷⁵

‘On the King’s Supremacy in the Church’ provides general support for the principle of royal supremacy but lacks positive arguments on any specific power the king should assume. As mentioned in the previous section, Herbert’s main strategy was to justify the royal supremacy over the Church by citing the examples of the Israelite kings in the Old Testament. These illustrations, however, only showed the ancient nature of royal supremacy, but could not explain the content of the King’s power over the Church. This meant that Herbert did not specifically denote the scope and limit of the power, though the treatise aimed to support the royal supremacy. As Herbert confessed at the end of the treatise that it was ‘beyond [his] Scope’ to define

Private Conscience in Seventeenth-Century England: Essays Presented to G.E. Aylmer (Oxford: Clarendon Press, 1993), 101–120. To make a comparison, royal supporters stressed the meaning of the sacred power of kings (obedience to the king) while the others emphasized the meaning of God-given power of kings (obedience to God).

⁷⁴ *AB*, 140.

⁷⁵ Elaine Escoll Kimmelman, ‘Lord Herbert of Cherbury as Historian’ (PhD Thesis; Harvard University, 1977), 10.

the detailed powers of princes and of clergymen,⁷⁶ he seemed to have no interest in defining the king's positive power. A comparison between Herbert's work and Bishop Andrewes's *Tortura Torti*, from which much of Herbert's treatise was extracted, confirms this point. Bishop Andrewes provided many specific points of the King's power over the Church, including the power to enact laws regarding the Church and the power to appoint bishops, to regulate *adiaphora*, and to pull down false worship;⁷⁷ however, Herbert's treatise provided none of the above.

Although 'On the King's Supremacy in the Church' lacks positive arguments for the king's power, in the end it particularly lists powers that kings should not claim. They are 'Not to arrogate any power of Creating new Articles of Faith, or bringing in strange, & different forms of Religious worship', 'Not to sacrifice, or administer Sacraments, or use any misteriall [mysticall] Rites',⁷⁸ which belong to Priesthood, nor yet to teach the Pulpit, or expound the hard Places of Scripture', and 'Not to consecrate Ecclesiasticall Persons, or interdict divine service to any Body, or excommunicate them, And finally not to use any Jurisdiction, apperteyning to the Keys'.⁷⁹ By listing these limits Herbert's treatise shows that kings should not have the power to create new doctrines and forms of worship, to administer the Word and Sacraments, or to give or remove the spiritual power of clergymen. The limits in fact correspond with the boundary of the King's power of the Elizabethan settlement. The Queen made nearly the same points in *A Declaration of the Queen's Proceedings Since Her Reign* (1569), where she denied that 'we do either challenge or take to us, as malicious persons do unduly surmise, any superiority to ourselves to define[,]

⁷⁶ KSC, 186.

⁷⁷ For the main argument of *Tortura Torti* on the rights of royal supremacy, also see T. Lyon, *The Theory of Religious Liberty in England 1603–39* (Cambridge: Cambridge University Press, 2015), 55–56.

⁷⁸ See Hutcheson's note in KSC, 186n.

⁷⁹ DRL, 186.

decide or determine any article or point of the Christian faith and religion, or to change any ancient ceremony of the Church from the form before received and observed by the Catholic and Apostolic Church, or the use of any function belonging to any ecclesiastical person being a minister of the Word and Sacraments in the Church'.⁸⁰ This similarity reveals that Herbert was of the same opinion that the King's power over the Church was limited, and that kings possessed no purely spiritual power.

After Herbert finished 'On the King's Supremacy in the Church', he presented it to King Charles. It is likely that the King had little interest in it, for the following two reasons. First, Herbert's statement on the restrictions of the King's power over the Church was not new to Charles I. The King had already presented the same point in 'A Proclamation for the establishing of the Peace and Quiet of the Church of England' dated on 14 June 1626. The proclamation declared the King's 'full and constant resolution, that neither in matter of Doctrine, or Discipline of the Church, nor in the government of the State, he will admit of the least innovation'.⁸¹ This meant that Charles I had already accepted that he should not invent any religious tenet or practice, at least in his sense. Secondly, Herbert's treatise provided no support for the Laudian reform programme, which Charles, as mentioned in the first section of this chapter, might have wanted Herbert to defend. After reading the treatise, the King forwarded it to Archbishop William Laud several months later, and gave no reward to Herbert.⁸² Similarly, Laud left no comment on it.⁸³

⁸⁰ William Edward Collins, *Queen Elizabeth's Defence of Her Proceedings in Church and State with an Introductory Essay on the Northern Rebellion* (London: Society for Promoting Christian Knowledge, 1899), 42–44.

⁸¹ James Larkin, *Stuart Royal Proclamations*, vol. 2 (Oxford: Clarendon Press, 1983), 91–93.

⁸² *AB*, 143.

⁸³ In his works of 7 volumes, Laud in 1635 only briefly mentioned his taking care of Herbert's eldest son, Richard Herbert. See William Scott and James Bliss, eds., *The Works of the Most Reverend Father in God, William Laud, Sometime Lord Archbishop of Canterbury* (Oxford: John Henry Parker, 1847), vol. 7, 214. Sir Sidney Lee said that Herbert 'maintained a formal intimacy' with Laud, but he provided

In *The Life and Raigne of King Henry the Eighth*, Herbert's description of King Henry VIII's power over the Church echoed the abovementioned points of 'On the King's Supremacy in the Church': Henry did not have the power to create any new doctrines or minister any sacrament though he had much knowledge and many opinions on theology. According to Herbert, during 1536 to 1538 when Henry and his ministers made several important declarations of faith, Henry, 'having taken on him[self] the title of *supreme Head* in his Dominions, would shew how capable he was of it'. Therefore, Henry 'devised' eight religious articles, but later 'recommended [them] afterwards to the Convocation house by Cromwell'.⁸⁴ This means that Henry did not declare religious articles arbitrarily, but left it to the clergymen to consider whether these articles could be sanctioned as doctrines.⁸⁵ Moreover, when mentioning the fifth article concerning the use of images and the eighth article concerning purgatory, Henry was of the opinion that 'the true use of them should be taught by Bishops and Preachers every where'.⁸⁶ King Henry VIII neither used nor encroached on priestly power, according to Herbert. One religious matter Henry could decide arbitrarily was about honouring the saints, which was a part of *adiaphora*. As

no further evidence about their relationship. *AB*, 144. Comparatively speaking, Sir Edward Herbert (1591-1657), nephew of Herbert of Cherbury, attorney-general to the Queen in 1635, and solicitor-general in 1640, was a much closer ally of Charles I and Laud.

⁸⁴ For these eight articles, see *L&R*, 402b-405. It is well worth noting that the eight devised articles were blended with Herbert's religious views, especially his conspicuous emphasis on Penance, his view that the controversies concerning Eucharist and Baptism cannot be studied in one's life, and his view on sacraments and rites. It is very probable that he listed these in the name of Henry VIII to influence Charles I and even the more general readers. Surely Herbert did not say that the eight articles were accepted by the Convocation, but the point here is that he distorted some of Henry's opinions. For instance, in 1537 when Henry examined the Bishop's Book, he intended to increase the importance of the sacrament of marriage, not Penance. See Solt, *Church and State in Early Modern England, 1509-1640*, 35-36. Moreover, the earliest manuscript of *The Life and Raigne*, i.e. Jesus College Manuscript 71-74, showed that Herbert put much effort into displaying these eight articles. Many corrections and supplements were found in these paragraphs. See MS Jesus College 73, pp. 776/132-784/141. Here we see two series of page numbers. The first series starts from MS Jesus College 71, while the second starts from the first page of MS Jesus College 73. The second series was added after the first series, since it gave page numbers for those small paper notes which originally had no page numbers.

⁸⁵ *L&R*, 405.

⁸⁶ *L&R*, 403b.

Herbert stated, it belonged to the King's power to decide whether to keep or abolish the holy days.⁸⁷

As to the duty of the King to protect the true religion, which was an important point of royal supporters from Elizabeth's reign: Herbert did mention this when he discussed the supremacy controversy between popes and kings. Herbert stated that princes were obliged to 'extinguish Usurpations in Religion, and together, vindicate her from Errour and neglects' when popes continued to 'Intermix and trouble all things', 'confound and Joyne together the certaine, and the uncertaine, and compell Men equally to the belief of all they teach'.⁸⁸ Herbert's argument, however, seemed to indicate that the king had this power mainly as a result of the pope's corruption.

In contrast to Herbert's lack of positive points on the King's power, his other works reveal some specific powers of the priestly class. The clergymen, according to Herbert, had the right to preach, to administer the sacraments, and to explain the difficult or obscure passages of Scripture.⁸⁹ Herbert presented their first two rights when listing six social functions of clergymen in *De Religione Laici*,⁹⁰ while he mentioned the third right in a fictional speech of an anonymous MP in *The Life and Raigne*.⁹¹ Moreover, in addition to showing the powers of the clergymen, Herbert in *The Life and Raigne* stated that the Pope could hold a kind of supremacy on spiritual matters. The supremacy the Pope could retain came from 'his ancient Patriarchall

⁸⁷ *L&R*, 408.

⁸⁸ *L&R*, 366.

⁸⁹ Herbert thought that there were some 'errors' in the Scriptures. See *DRL*, 91, 99-101 and *Dialogue*, especially 77, 239-250.

⁹⁰ They 'retained the right of opening and clothing the temples, of playing the part of public intercessors with God, of initiating the people into the truly holy rites, of delivering sermons from pulpits, of declaring the remission of sins by virtue of true penitence, of comforting the sick and burying the dead, and of receiving the offerings made them'. *DRL*, 111. Since these six social functions of the clergymen are quite limited or redundant in appearance, it is tempting to think that they could show Herbert's distaste for the priestly class. It could be said so, but I believe that Herbert limited the powers of the clergymen, as he put much limit on the King's power over the Church, in order to enlarge the freedom of the individual conscience.

⁹¹ 'I shall be content, that the Illustration or Explication of some points, may be worth the Churches labour'. *L&R*, 366.

Right, without intermeddling yet with that [the King's] Supremacy,' on condition that he abide strictly by the religious common notions and encouraged the people to 'Piety, Charity, Good life, Repentance, and what ever else may conduce to everlasting happiness'.⁹² In other words, Herbert held that if the pope abandoned corrupt behaviour and supported the fundamental principles of religion he suggested, he could hold the honour or even the authority of the primacy in spiritual matters.

During the reigns of James I and Charles I, royal supporters often used the theory of the divine right of the monarchy when they discoursed on the power of the King. They often stressed the God-likeness of the monarch, and described kings as god, shepherd, riverbank (keeping back the waves), head (ruling the body politic), mighty tree (shielding against the tempest), or gardener (cleaning out the hogweed and thistle, i.e., rebels).⁹³ John Donne, for instance, often paralleled King James with Christ in his court sermons.⁹⁴ Royal supporters said that the King was entitled to claim his God-given powers, and that subjects should obey the commands of kings.⁹⁵ However, Herbert's 'On the King's Supremacy in the Church' and *The Life and Raigne* adopted no such arguments or implications. He did not affirm the theory of the divine right of monarchy and was unlike Donne, who became an advocate for the theory after the King became his patron. Moreover, Herbert's thought seemed to contradict some points of the theory of the divine right of monarchy. First, one important idea of the theory was that the King is an intercessor between God and people, but Herbert in his *De Religione Laici* ascribed the role only to the priestly class.⁹⁶ Secondly, the theory stressed the absolute obedience to the King, as Laud had claimed that disobedience to

⁹² *L&R*, 367.

⁹³ Elena Kiryanova, 'Images of Kingship: Charles I, Accession Sermons, and the Theory of Divine Right', *History* 100, no. 339 (2015): 29–31.

⁹⁴ The most striking case was his preaching before the dead king's body. See Shami, 'Kings and Desperate Men: John Donne Preaches at Court', 11–12.

⁹⁵ As stated in the footnote 73 of this chapter, though this theory could enhance the authority of the King, it could limit his power as well.

⁹⁶ See footnote 90 of this chapter.

the monarch was the most horrible sin a man could ever commit,⁹⁷ whereas this point is not compatible with Herbert's thought. What Herbert valued the most was the independent judgement of individuals, and in *De Veritate* he made many appeals for not accepting or adhering to what the authorities said, though the King was the highest authority in the State.⁹⁸

It is worth noting that Herbert maintained that neither kings nor clergymen had the right to interfere with the foundation of religion, i.e. the five religious common notions. In 'On the King's Supremacy in the Church' Herbert had suggested that kings should not claim the right to create new doctrines, rites and ceremonies.⁹⁹ Again, as mentioned above, in *The Life and Raigne* Herbert wrote that the condition of the pope's holding his primacy was to leave the fundamental principles of religion intact. In *De Religione Laici*, *De Religione Gentilium* and *A Dialogue Between A Tutor and his Pupil*, Herbert strongly critiqued the priestly class since he believed that they invented new articles to perplex the people in all ages. The above illustrations also show that Herbert held firm to his religious beliefs and that, perhaps due to his distrust of priests,¹⁰⁰ he did not mention any point relating to the bishop's responsibility to criticise the misdeeds of the King, nor the King's obligation to seek advice from his bishops concerning religious matters; both points had been very important issues since the Elizabethan settlement.¹⁰¹

There is no doubt that Herbert generally supported royal supremacy, but his

⁹⁷ Kiryanova, 'Images of Kingship: Charles I, Accession Sermons, and the Theory of Divine Right', 27.

⁹⁸ *DV*, 72-73.

⁹⁹ *KSC*, 186.

¹⁰⁰ See footnote 182 of chapter 2.

¹⁰¹ CF: 'we are by this [God's] authority bound to...and consequently to provide, that the Church may be governed and taught by archbishops, bishops, and ministers according to the ecclesiastical ancient policy of the realm, whom we do assist with our sovereign power &c'. Collins, *Queen Elizabeth's Defence of Her Proceedings in Church and State with an Introductory Essay on the Northern Rebellion*, 42-43. For the same opinion of John Jewel (1522-1571) and Alexander Nowell (1507-1602), see Rose, *Godly Kingship in Restoration England*, 52.

support for it over the Church was limited. Unlike Donne and Andrewes, Herbert did not exploit the theory of the divine right of kings to affirm and uphold the monarchy's authority, and he specifically stressed the powers kings should not have in the Church. His arguments also show that he was not a person who would try his best to flatter his patrons, or who was willing to pay a high price in exchange for the King's reward. He stood firm in face of the King's demand that he write in support of the royal supremacy over the Church,¹⁰² and even tried to influence the King by *The Life and Raigne*.¹⁰³ His arguments for royal supremacy were carefully weighted and presented, contrary to Lee's negative assessment of 'On the King's Supremacy in the Church'.¹⁰⁴

¹⁰² For Charles' possible intention of asking Herbert to write this treatise, see section 3.1.

¹⁰³ Herbert's ambassadorship to France reveals the similar attitude; that is, with his independent judgement Herbert tried to influence James I on some issues. Concerning James's proposal to match Prince Charles with the Spanish Infanta in 1617, for example, Bishop Andrewes was inclined to agree to this proposal, while Herbert, impelled by his antagonism towards Catholic Spain, wrote a letter to James trying to persuade him to consider the French marriage. Welsby, *Lancelot Andrewes 1555-1626*, 209–210; *AB*, 126–128. Herbert also opposed the marriage with Spain at the French court, see Nancy Lynne Zaice, "Lord Edward Herbert of Chirbury: 'Being' and Creating the True Renaissance Courtier" (Ph.D Thesis, University of South Carolina, 2006), 125–138. And when four years later another marriage with the French Princess Henrietta was in negotiation, Herbert, as Sir Sidney Lee stated, went against James's will again by opening the discussion of whether the French King, who was 'actually making proffers of friendship to the Elector's worst enemy, the Duke of Bavaria,' could really help the recovery of the Elector-Palatine's territory (this is part of the content of the marriage), and finally Herbert lost his place for his 'free speech'. *AB*, 136.

¹⁰⁴ *AB*, 143.

3.4 The royal supremacy and its martyrs

The section above having established that Herbert provided only limited support for the King's power over the Church, this section will focus on discussions of the Henrician Reformation in the *The Life and Raigne of King Henry the Eighth*. As discussed in the first section, a moral dilemma often existed for those clergymen who supported the royal supremacy over the Church because the King's power might encroach on their consciences. This was also the case with Herbert. He had such scruples because on the one hand he supported the royal supremacy over the Church,¹⁰⁵ but on the other hand he greatly valued the independent judgement of conscience. When Herbert was writing *The Life and Raigne*, his scruples became stronger because in this history there existed many conflicts between allegiance to the King as the head of the Church of England and personal conscience. When Henry VIII established the Anglican Church with his supremacy, many martyrs, because of their refusal to overrule their religious conscience, infringed the laws of supremacy, and were therefore executed. In the later reforms of the late 1530s, more people were killed or faced the terrors of losing their lives because the King's religious policies swayed between Protestantism and Catholicism. In *The Life and Raigne*, Herbert did in most of the cases defend Henry's executions of those who disobeyed the laws of supremacy and his religious policies, but he did not justify all of them. In some cases he showed his sympathy for the martyrs. The inconsistent discourses of Herbert show the conflict between his support for the royal supremacy and his conscience.¹⁰⁶ Hence,

¹⁰⁵ Herbert said that if the King had not had the supremacy, people would have lived 'betwixt the Terrours of a secular death, and Eternall punishments'. See *KSC*, 185.

¹⁰⁶ Herbert left numerous corrections, deletions and supplements in the earliest version of *The Life and Raigne* (Jesus College Manuscript 71-73) when discussing the royal supremacy and its martyrs, implying that he had some scruples here. To be more specific, many corrections, deletions and supplements existed when Herbert discussed the execution of John Fisher and Thomas More (MS Jesus College 73, pp. 664/4-672/13), the death of Anne Boleyn (MS Jesus College 73, pp. 730/80-744/94),

it could be said that Herbert's endorsement of the royal supremacy suffered a crucial test especially when he narrated the Henrician Reformation. The purpose of this section is to show how Herbert coped with this internal conflict, and to show that Herbert regarded conscience as the limit of the King's power over individuals.

This section does not include all the executed figures in the Henrician Reformation, mainly because they do not reflect Herbert's inner conflict between the royal supremacy and conscience. In Herbert's view, some victims of the laws of supremacy did not qualify as martyrs since they disobeyed the laws not on grounds of conscience, but mainly on grounds of their false beliefs. John Forrest (1471-1538) and Elizabeth Barton (1506-1534), the so-called 'Holy Maid of Kent', who delivered a prophesy that the King would soon die after he married Anne Boleyn, were two examples of this type. Herbert depicted the former as a superstitious clergyman, while he described the latter as a woman who exhibited 'divers feigned Miracles, accompanied with some Wisardly Unsoothsaying' about King Henry's death.¹⁰⁷ Since neither of them were executed for their consciences, at least in Herbert's sense, they do not belong in the focus of this section. Instead, the section will mainly focus on those who in Herbert's judgement disobeyed the laws of supremacy for reasons of conscience, among whom Thomas More and John Fisher were two notable cases. Moreover, this discussion will include Herbert's account of the death of Anne Boleyn

the dissolution of the monasteries (MS Jesus College 73, pp. 681/23-695/39) and the Six Articles (MS Jesus College 73, pp. 867/223-876/245). Some of the paragraphs are terribly amended. On the one hand it showed that many complex issues existed during the Henrician Reformation, while on the other hand it presented Herbert's concern for these topics.

¹⁰⁷ *L&R*, 376a, 432. CF: Elizabeth Barton was 'the grand imposture' who made a profit by being in a 'counterfeit Convulsion' imparting 'the secret [of God] to the Curate of the Parish' and relating 'strange vision revealed by God to her in the time of her ecstasie'. Francis Godwin, *Annales of England. Containing the Reignes of Henry the Eighth. Edward the Sixth. Queen Mary*. (London: Printed by A. Islip, and W. Stansby, 1630), 130. CF: 'At this time the name of the nun Anne Barton [i.e. Elizabeth Barton] was in all men's mouths... Sir Thomas More, among others, had carefully tested the spirit of the nun, and was unable to discover in it any trace of that fanaticism which was maliciously laid to her charge at that time'. Nicholas Sander, *Rise and Growth of the Anglican Schism*, trans. David Lewis (London: Burns & Oates, 1877), 112.

(1501-1536), Henry's campaigns of the dissolution of monasteries, and the enactment of the Six Articles. All of these topics not only were central to the Henrician Reformation, but also show Herbert's conflict between the royal supremacy and conscience. The time period of the whole discussion began with the Henrician Reformation till 1541 when the Six Articles ceased to be strictly enforced. At that time, Herbert noted that 'now a cruell time did passe in England'.¹⁰⁸

By comparing *The Life and Raigne* with other sixteenth- and seventeenth-century histories of King Henry VIII by the contemporaries, this section will also show that Herbert's inner conflict between the royal supremacy and conscience is a characteristic of his work. It distinguishes his history from other sixteenth- and seventeenth-century histories of King Henry VIII. When Herbert was writing it, he had access to many former studies on the history of the King, and they exhibited a wide spectrum of views. *Rise and Growth of the Anglican Schism* (first published in 1585) by Nicholas Sander stood on one extreme of the spectrum. Favours the Roman Catholic Church, it denounced Henry's every deed and supported every martyr executed by Henry. On the other extreme of the spectrum was situated *The Pilgrim: A Dialogue on The Life and Actions of King Henry the Eighth* (first published in 1546) by William Thomas. Supporting King Henry, it condemned the disobedient clergymen and explained how they resisted the King and his laws. Similarly, Edward Hall's *The Union of the Two Noble Families of Lancaster and York*, better known as *Hall's Chronicle* (two editions published in 1548 and in 1550) stood against any disobedient man.¹⁰⁹ Herbert did not follow such extreme viewpoints of these works, but only accepted some records he believed to be true. If the abovementioned works stood on opposite extremes of the spectrum, Bishop Francis

¹⁰⁸ *L&R*, 466.

¹⁰⁹ It was later banned by Queen Mary on 13th June 1555.

Godwin composed a work standing in between, *Annales of England. Containing the Reignes of Henry the Eighth. Edward the Sixth. Queen Mary* (first published in 1616). He denounced both the corruption of the Roman Catholic Church and the tyrannical deeds of Henry VIII.¹¹⁰

In May 1535 some clergymen who ‘openly spake against the King’s supremacy’ were executed by the order of the King, according to the earliest record of *The Life and Raigne*. The case shows Herbert’s two contradictory narratives. Herbert first presented Henry’s mercy and his reluctance to enforce the execution. Herbert wrote that Henry executed them after many considerations, and that the King ‘mourned inwardly’ after they were killed since ‘This piece of Justice was not yet so familiar to our King, but that it troubled him much, for he would have been glad not to be compell’d to such violent courses’.¹¹¹ However, Herbert then discussed the King’s decision to execute more martyrs. The sorrows of the King, Herbert continued, could not stop his determined mind from continuing to kill the disobedient. Henry even punished ‘many pretended Reformers or Contradictors of the Roman Catholique Religion’. Furthermore, since Henry ‘found the terrours already given, did not suffice to keep the rest in awe, he resolved to make some great examples [i.e. the cases of John Fisher and Thomas More]’.¹¹²

After having shown the above contradictory narrations, Herbert very briefly expressed his sympathy for those executed by commenting that this was a ‘bloudy

¹¹⁰ Maintaining the scope and limit of the King’s power over the Church set from the Elizabeth Settlement, Godwin applied this framework to his history of King Henry VIII. When Godwin introduced the act of supremacy, he said that ‘the King stiled himself Supreme Head of the Church of England, that the Archbishop of Canterbury executed all those offices which formerly the Pope only did, and that not as the Popes Legate, but as Primate of England, who under the King claimed chiefe authority in Ecclesiasticall affairs throughout his whole Province’. Godwin, *Annales of England*, 127–28.

¹¹¹ *L&R*, 391a.

¹¹² *L&R*, 391a.

time' for both Catholicism and Protestantism.¹¹³ The comment in fact showed that Herbert's description of the King's sorrow over the executed in the beginning was actually a defence of the King; i.e. Herbert intended to show the King's goodness rather than his cruelty. Moreover, Herbert's defence of the King is evident when it is compared to descriptions with other contemporary works. Godwin commented without any reservation that King Henry was afraid of being regarded as a man without faith when he persecuted not only the Catholics but also the Protestants.¹¹⁴ Godwin did not say that the King mourned for the killed; nor could this kind of description be seen in the works of William Thomas or Edward Hall. In addition, although Herbert described this period as a bloody time for both the Catholics and the Protestants, Herbert only mentioned a specific group of martyrs, John Firth (1503-1533) and some 'Hollanders', who were burned at the stake since they 'devised some different Opinions by themselves, concerning certain Articles of Christian Religion';¹¹⁵ but John Firth was lamented by Godwin and Edward Hall.¹¹⁶ In brief, Herbert first tried to defend the King in the early persecutions, though he later also showed sympathy for the martyrs.

Unlike the above-mentioned disobedient clergymen, John Fisher, Bishop of Rochester, and Thomas More (Lord Chancellor 1529-1532) gained more attention from Herbert. Fisher had just been pardoned by the King for believing the words of Elizabeth Barton, the Nun of Kent, in 1534,¹¹⁷ but in 1535 he was tried again and

¹¹³ *L&R*, 391a.

¹¹⁴ 'But the king fearing that it might be thought, That hee tooke these courses rather out of a contempt of Religion, than in regard of the tyrannie of the Court of Rome; to free himselfe from all suspition either of favouring LVTHER, or any authors of new Opinions, began to persecute that sort of men whom the Vulgar called Heretiques'. Godwin, *Annales of England*, 133.

¹¹⁵ *L&R*, 391a.

¹¹⁶ CF: John Firth was the 'learned and godly young man'. Godwin, *Annales of England*, 133. Edward Hall said that John Firth was 'very well learned and had an excellent goodly witte'. Edward Hall, *The Union of the Two Noble Families of Lancaster and York* (London: Richard Grafton, 1550, facsimile ed., 1970), fol. cc.xxv.

¹¹⁷ *L&R*, 376a.

executed thereafter since he refused to take the oath of the Act of Succession regarding the King's marriage, succession, and royal supremacy. Herbert tried to defend the King in this case, too. He first said that the new Pope Paul III accelerated Fisher's death since he declared him Cardinal St. Vitale, and this declaration incurred the King's anger. Henry was angered because he 'knew of what consequence it would be, if his subjects were thus encourag'd to contemne his Authority'.¹¹⁸ Then Herbert, though he could not be certain about the content of Fisher's accusation, found 'that on the seventh of May last in the Tower of London before diverse Persons, Hee [Fisher] had falsely, Maliciously and Traiterously said, That the King is not Supreme head of the Church of England'.¹¹⁹ This meant that in Herbert's view Fisher was guilty according to the law, implying that Henry could be justified in executing him. Moreover, Herbert found that Henry 'did but unwillingly proceed [to the execution], as having held him ever in singular esteem, for his learning and good parts'. These descriptions all revealed that Henry was not a cruel and bloody king, and that he was to some extent stimulated by the Pope to execute Fisher.

Herbert's description of Fisher's trial was close to that of Godwin but far from those of Nicholas Sander, William Thomas and Edward Hall, and Herbert did provide more delicate descriptions than others, showing his carefulness and his concern for the case. Sander briefly said that Henry had resolved to kill Fisher before he heard that Fisher was promoted a Cardinal.¹²⁰ In other words, the Pope did not accelerate the execution of Fisher. Sander's opinion, however, was contrary to those of others.¹²¹

¹¹⁸ *L&R*, 392a.

¹¹⁹ *L&R*, 392a.

¹²⁰ 'He resolved at last to put to death the bishop of Rochester first, to see whether More afterwards could be made to change his opinion' and 'he [Henry] had heard by this time that the bishop had been made a Cardinal, and as for breaking his resolution, there was not the slightest hope that he could ever do it'. Nicholas Sander, *Rise and Growth of the Anglican Schism*, ed. David Lewis (London: Burns & Oates, 1877), 121.

¹²¹ Modern study showed the contrary view against Sander, too. Solt, *Church and State in Early Modern England, 1509-1640*, 29.

William Thomas believed that Henry made his decision to kill Fisher after his promotion by the Pope since Henry was ‘fearing the example of his predecessor King John’.¹²² Edward Hall, who was wholeheartedly in favour of Henry, denounced Fisher as a traitor.¹²³ Moreover, after Fisher was beheaded and his head was thrown into a hole on London bridge, Hall said cold-bloodedly that ‘it was sayd that the Pope...sent the Cardinalles hat as farre as Caleys, but the head it should haue stande on, was as high as London bridge or euer the hat could come to Bishop Fysher, & then it was to late and therefore he neither ware it nor enioyed his office’.¹²⁴ Godwin briefly mentioned that Fisher was ‘a man much revered by the People for his holy life and great learning’, ‘but the Pope was the occasion of his death, who to ease the burthen of his now a years imprisonment, by the addition of a new title, had on the one and twentieth of May created him Cardinall’.¹²⁵ Again, compared to the abovementioned descriptions, Herbert’s narration is more careful and nuanced. Herbert not only considered Henry’s position in this case but also was concerned about the concrete proof used in Fisher’s trial.

Perhaps Fisher’s death could be blamed on the Pope and on his own ‘traitorous’ confession, making it easier for Herbert to defend the King, but the same did not hold true in the case of Thomas More, in which Herbert did not defend the King, but stood on More’s side. Herbert first claimed that More remained silent most of the time, and

¹²² The example denoted the conflict between King John and Innocent III. After King John was excommunicated, he surrendered to the Pope. William Thomas, *The Pilgrim: A Dialogue on The Life and Actions of King Henry the Eighth*, ed. James Anthony Froude (London: Parker, Son, and Bourn, West Strand, 1861), 31.

¹²³ ‘Ihon Fysher bishop of Rochester...hauyng knowlege of the false fained and dissimled reuelacions [from Elizabeth Barton], trayterously conspired against our sayd soueraigne lorde’. Hall, *The Union of the Two Noble Families of Lancaster and York*, fol.cc.xxiii.

¹²⁴ Hall, fol. cc. xxvi. The spelling has been double-checked with its modern edition. See Edward Hall, *Hall’s Chronicle: Containing the History of England, during the Reign of Henry the Fourth, and the Succeeding Monarchs, to the End of the Reign of Henry the Eighth*, ed. Henry Ellis (London: Published for J. Johnson, 1809), 817.

¹²⁵ Godwin, *Annales of England*, 136.

he did not receive any promotion or help from the Pope.¹²⁶ Moreover, Herbert could not find other facts or proof supporting the indictment against More.¹²⁷ Then Herbert, without mentioning the King – it could be said that the King faded out in Herbert’s narration of More’s trial –, described the dilemma More faced as followed:

It being observ’d that both of them [Fisher and More] said, in their Examinations, the Act about the Supremacy was like a two edg’d sword, for if one answer one way, it will confound his Soule, and if the other way, it will confound his Body.

The so-called ‘two edg’d sword’ meant that they would definitely be hurt no matter which option they took. If they took the oath of the Act to save their bodies, they would sacrifice their souls or their consciences; if they refused, they would die. The metaphor also meant that the origin of the dilemma was the unreasonableness of the law, and hence it implied that it was an evil law in Herbert’s view.

After describing the double-edged sword More faced, Herbert then presented the conversation between More and Richard Rich (1496-1567), Solicitor General at that time.¹²⁸ In this conversation, More was of the opinion that the case of the primacy was not the same as that of the kingship since the former should be determined by conscience, while the latter was determined by the law. Telling Rich that ‘your conscience will save you, and my conscience will save me’, More said that he chose

¹²⁶ *L&R*, 393a.

¹²⁷ CF: ‘But Sir Thomas More, (as his Indictment hath it) *malitiose silebat*. ‘Hee was attained of misprision of Treason, as I find by the Parliament Rolls, was thought sufficient to condemn him’. *L&R*, 393a.

¹²⁸ The Solicitor General tried to persuade More by asking him, if it ‘were enacted by Parliament, that Richard Rich should be King, and that it should be Treason for any one to deny it, what offence it were to contravene this Act’? And More replied that he would if he said no, but said that it was a trivial thing. More, then, proposed another question ‘suppose by Parliament it were enacted *quod Deus non sit Deus* [God was not God], and that it were Treason to contravene’? Richard Rich gave a positive answer but ‘said withal, I will propose a middle Case, because yours is too high.’ And he continued to ask why he refused to accept the title of the King, the supreme head of the Church, to which More replied that ‘a Parliament can make a King and Depose him, and that every Parliament man may give his consent thereunto, but that a Subject cannot be bound so in the case of Supremacy’. *L&R*, 393a. For the full original Latin and English content, see Henry Ansgar Kelly, Louis W Karlin, and Gerard Wegemer, *Thomas More’s Trial by Jury: A Procedural and Legal Review with A Collection of Documents* (Woodbridge: Boydell Press, 2011), 183–85.

to save his conscience and sacrifice his body.¹²⁹ Since More refused to sacrifice his conscience, he was found guilty of high treason. At the final scene of More's death, Herbert wrote:

This great Person hereupon going shortly after, to the place of Execution, met among many friends one only Enemy, who openly revil'd him, for a Sentence heretofore given in Chancery, to which, yet, he made no answer, but that if it were to doe, he would do so again. And, now, being resolv'd to die, he returned to his wonted facetiousnesse. Therefore, being to goe up the Scaffold, he said to one; Friend help me up, and when I go down, again, let me shift for my selfe as I can. Being now mounted, the Executioner (as the custome is) asked him forgivenessse, which he granted, but told him withall, he should never have honesty by cutting off his Head, his Neck was so short. Then laying down his head on the block, he bid the Executioner stay till he had layd aside his Beard, for (said he) it never committed Treason. After which, comming to some private Devotions, hee received his death. *This ended Sir Thomas More, with so little consternation, as even terrours of death could not take off the pleasure hee had in his conceited and merry Language, which many attributed to his Innocence. For certainly though hee fell into the danger of the Law, they thought his intentions were rather to elude it with ambiguous answers, and an affected Silence, than to declare himself any way.*¹³⁰

From Herbert's description, More was a great man who resolved to save his conscience at the cost of his life. Herbert knew that the primacy of the Pope was what More's conscience believed,¹³¹ and he had tried his best not to offend the King both on his marriage with Ann Boleyn and on his supremacy.

The narration of 'the double-edged sword' dilemma Thomas More faced was not

¹²⁹ Kelly, Karlin, and Wegemer, *Thomas More's Trial by Jury*, 183.

¹³⁰ *L&R*, 394a. Italics mine. It is possible that the origin of the final words of Thomas More, which was before the italic words, was from Edward Hall's record. See the same narration in Hall, *The Union of the Two Noble Families of Lancaster and York*, fol. cc. xxvi.

¹³¹ 'Hee could not deny the Pope a Primacy'. *L&R*, 394a.

found in other contemporary works on the history of King Henry VIII. This absence suggests that Herbert, who valued individual conscience, was particularly aware of the conflict between the royal supremacy and individual conscience in this case. Sander, who concentrated on slandering Henry's cruel deeds and on supporting the martyrs, recorded that More publicly declared himself a Roman Catholic in the trial and argued that the papal supremacy was grounded not only in human law but also in divine law – but Sander's record might not be reliable since it cannot be found elsewhere.¹³² William Thomas acknowledged that 'the Bishop of Rochester, and More, among the rest, held with the negative part [refusing to take the oath of allegiance], according to their conscience, as I suppose'. However, Thomas was determined to defend King Henry, and disagreed with the conscientious grounds of Fisher and More. Thomas later claimed that Fisher and More 'murmured against the King, provoking his displeasure' even though the King had 'supported their ignorance more than nine months'.¹³³ William Thomas stressed the King's generosity while casting Fisher and More as disobedient and traitorous. Like William Thomas, Edward Hall described More as 'a great persecutor of suche as detested the supremacy of the bishop of Rome'. But he could not understand why More delivered some 'tauntyng and mockyng' words when he was mounting to the scaffold.¹³⁴ Herbert recorded the same content of the last witty words of Thomas More,¹³⁵ but he deemed it as More's 'facetiousness' not as his 'tauntyng and mockyng'. Francis Godwin's narration on the

¹³² According to Sander, More told the judges who sentenced him to death that he 'have by the grace of God been always a Catholic, never out of the communion of the Roman Pontiff...and found out that the authority of the Roman Pontiff, which you rashly ... have set aside, is not only lawful, to be respected, and necessary, but also grounded on the divine law and prescription. That is my opinion; that is the belief in which by the grace of God I shall die.' Sander, *Rise and Growth of the Anglican Schism*, 125.

¹³³ Thomas, *The Pilgrim: A Dialogue on The Life and Actions of King Henry the Eighth*, 31.

¹³⁴ 'I cannot tell whether I should call him a foolishe wyseman or a wyse foolishman, for vndoubtedly he beside his learnyng, had a great witte, but it was mingled with tauntyng and mockyng...'. Hall, *The Union of the Two Noble Families of Lancaster and York*, fol. cc. xxvi.

¹³⁵ See footnote 130 of this chapter.

case of More was closer to Herbert's, but still he did not touch the double-edged sword dilemma. Godwin commented that Fisher and More 'were indeed very learned, but most obstinate stickers in the behalfe of the Church of Rome'.¹³⁶ As to the last words of More, Godwin thought 'the most censorious fault him in nothing, but his too too jesting (I will not say scoffing) wit, to which he gaue more liberty, then did beseeme the grauity of his person, not tempering himselfe in the midst of his calamity, no not at the very instant of death'.¹³⁷ Compared to the other writers, Herbert showed more sympathy for Thomas More, placing his emphasis on the importance of individual conscience rather than on King Henry's authority as supreme head of the Church; in contrast, Sander, Thomas and Hall described the case according to their more established opinions and did not show a conflict between conscience and royal supremacy.

But Herbert did not always show sympathy for martyrs who refused to accept Henry's supremacy. Reginald Pole (1500-1558), later Cardinal Pole (1536), first had a quarrel with Henry in 1535 when he lived in Padua. At that time, Pole wrote *Pro ecclesiasticae unitatis defensio* (or *Defence of the Unity of the Church*), speaking not only against the King's supremacy but also against the King's marriage to Anne Boleyn; the King was furious. In this case, Herbert showed no sympathy for Pole. He recorded the conflict more objectively and calmly and did not, as William Thomas did, speak with irony or even slander Pole.¹³⁸ After Pole published his work, Henry demanded that he come back to England 'to explaine some passages thereof,' but Pole

¹³⁶ Godwin, *Annales of England*, 133.

¹³⁷ *Ibid.*, 136.

¹³⁸ 'Now will I answer unto the persecution of Cardinal Pole, and unto the death of his mother and friends; which, in effect, is nothing so marvellous nor so cruel as it is made here in Italy...it had been better he [Pole] had died in his cradle than lived to be an occasion of so much mischief as hath followed for his sake, and is yet likely to follow.' Thomas, *The Pilgrim: A Dialogue on The Life and Actions of King Henry the Eighth*, 61.

refused since he knew that ‘it was declared Treason there’.¹³⁹ According to Herbert, although Henry was unable to seize the Cardinal, he found a chance to get his revenge three years later by executing Pole’s two brothers Henry, Lord Montagu, and Sir Geoffrey, and his mother, the Countess of Salisbury in an affair known as the Exeter conspiracy. Pole’s family members together with Pole were all ‘attainted of treason’.¹⁴⁰ Pole’s family could partly be regarded as the victims of Henry’s supremacy, but Herbert did not show any sympathy for them, perhaps because Pole was free from any trial or hurt, and perhaps because the trial of his family members was influenced by other political reasons. This case implies that Herbert had sympathy only for those who resisted the royal supremacy on grounds of conscience, not for those who appealed to other grounds.

In addition to the individual cases of Fisher and More, Herbert expressed significant scruples about the Six Articles enacted in 1539. In Herbert’s view, more people were entangled in this act, and some chose to listen to the judgement of conscience even though they could be risking their lives. Introducing the content of the Six Articles, which affirmed the doctrine of Transubstantiation and declared that anyone who denied it would be construed as a heretic and lose all his property, Herbert said that it was ‘called by some the Bloody Statute’.¹⁴¹ Furthermore, after the enforcement of the said law, Herbert could not refrain from criticising it:

The Six Articles being now published, gave no little occasion of murmure; since to revoke the conscience not only from its own Court, but from the ordinary ways of resolving controversies, to such an abrupt decision of the common Law (as is there set down) was thought to be a deturning of Religion from its right and usuall course; since the Conscience must be taught, not

¹³⁹ *L&R*, 390a.

¹⁴⁰ *L&R*, 447.

¹⁴¹ *L&R*, 446.

forced... Besides, to make the contravening of Doctrines to be capitall, before they be fully proved, is prejudiciall to that liberty, without which no man can justify himself before God or man.¹⁴²

‘The deturning of Religion from its right and usual course’ did not criticise the proclamation of Transubstantiation itself, but rather the cruel punishments it brought to the people, since Herbert expressed no particular opinion on this controversial doctrine.¹⁴³ It was the heavy penalty, not the doctrine itself, that left people no way to follow their consciences, except by risking their lives. Most importantly, the criticism showed that Herbert maintained that conscience should be persuaded, not forced.

Herbert then compared the victims of the Six Articles with John Fisher and Thomas More. Writing that ‘So that if Sir Thomas More and the Bishop of Rochester had their scruples about the Supremacy; These men were as Conscientious about the six Articles’,¹⁴⁴ Herbert thought that the victims also encountered the double-edged sword dilemma, and that they could save either their bodies or their consciences. Then, through some consecutive rhetorical questions, one of which was that ‘if Infidels and Heathens should do the like [use laws to force people to accept a religious belief], who would ever turn Christian?’, Herbert implied that authority should not suppress scruples.¹⁴⁵ In the end of the discussion, Herbert stated that ‘now [in 1541 when the law was not strictly enforced] a cruell time did passe in England, for as few durst protect those who refus’d to subscribe to the 6 Articles, so they suffered daily’.¹⁴⁶

The above discussions all showed Herbert’s deep concern about individual

¹⁴² *L&R*, 447-48.

¹⁴³ Herbert most of the time avoided discussing it. See *Dialogue*, 250-51.

¹⁴⁴ *L&R*, 449.

¹⁴⁵ This example was also quite a common point in his works, especially in *De Veritate*, *De Religione Laici*, and his *Dialogue*. *DV*, preface and Chapter 1. CF: ‘Tutor: But what if the divines in any country tell you, that you must reject all other faiths, and trust only to theirs? Pupil: I should reply, that this imposition was merely tyrannical and unjust; as taking away from man the liberty of finding out the truth’. *Dialogue*, 9.

¹⁴⁶ *L&R*, 466.

conscience.

That Herbert was especially concerned about the Six Articles encroaching on individual conscience can also be seen by comparing his narration with those of others. Godwin condemned the statute, but only mentioned briefly that many suffered by it.¹⁴⁷ Hall wrote that King Henry granted so many pardons to those who infringed the law, and that it was ‘the rigour of that lawe’ (not the malice of Henry) that brought ‘many an honest and simple persone to there [their] deathes’.¹⁴⁸ Hall’s statement was in fact a defence of the King since he intentionally separated the cruelty of the law from Henry, and presented Henry’s mercy for victims. Commenting on the enactment of the Six Articles, Sander said that it was a case of ‘the king and the bishops striving to save the schism they had begun from issuing in the Lutheran or Calvinistic heresy’.¹⁴⁹ Neither Godwin, nor Hall, nor Sander discussed the double-edged sword dilemma in the minds of people, nor did they emphasize the importance of individual conscience, though they all agreed that the Six Articles was a cruel statute.

But Herbert did not blame Henry for the threat of the Six Articles to individual conscience. The object of Herbert’s criticism was the law itself, not the King. Moreover, he found an excuse for Henry’s enactment of the law, namely his facing the rebellion at home and the invasion abroad that compelled the King to ‘keep an unity with the Roman Church’.¹⁵⁰ Herbert even showed Henry’s support for the liberty of individual conscience. According to Herbert, Henry, facing the objection of Thomas Cranmer (1489-1556) against the act, responded by sending him ‘a Copy of them [the Six Articles], and misliked not his freedom, as knowing all he spake was

¹⁴⁷ ‘These Lawes like those of Draco written in blood, were the destruction of multitudes, & silenced those who had been hitherto furtherers of Reformation’. Godwin, *Annales of England*, 172.

¹⁴⁸ Hall, *The Union of the Two Noble Families of Lancaster and York*, fol.cc.xxxiii.

¹⁴⁹ Sander, *Rise and Growth of the Anglican Schism*, 135.

¹⁵⁰ *L&R*, 448.

out of a sincere intention'.¹⁵¹ This record showed the King's generosity and liberalness, while it contradicted Herbert's earlier criticism of the law. If King Henry did not dislike Cranmer's straightforward and sincere objection, he should not have strictly enforced this bloody statute, as Herbert described it. It was likely that Herbert defended the King by separating the cruelty of the statute and the personality of Henry.

As the discussion above of the series of martyrs or victims of the royal supremacy shows, Herbert had two levels of description. In the first level or in appearance, he intended to defend the King's personality and his supremacy over the Church. The disobedient such as Fisher and More were executed for infringing upon certain laws, and Henry was 'reluctant' to proceed with the executions. In this way, it seemed that Henry was a merciful king and did not force anyone's conscience. However, a closer look at Herbert's descriptions reveals that Herbert had much sympathy for the martyrs, especially those who refused the supremacy on grounds of conscience. This sympathy forms Herbert's second level of description. His lament for the deaths of More and of those who risked their lives before the Six Articles reflected Herbert's true and deep concern. Moreover, in this level of description it could be said that Herbert implied criticism towards King Henry since the enactments of the laws of supremacy, such as the Succession Act or the Six Articles, could not in fact be separated from Henry's will. The Succession Act, for instance, regulated not only the royal supremacy but also the King's personal marriage and succession. Moreover, the King was also responsible for the unstable religious stance of the established Church during the 1530s, which swung back and forth between Protestantism and Catholicism.

It is very interesting that Herbert at first glance presented King Henry as a person

¹⁵¹ *L&R*, 448.

who valued individual conscience more than the authority of the royal supremacy, if one focuses only on his narrations about the King's response towards these executed figures. As mentioned above, Herbert said that the King felt sorrow for the executions of John Fisher and of the first group of clergymen who spoke against the King's supremacy. This sorrow implied that, like the martyrs, Henry felt the force of his conscience, and thus felt remorse for those who saved their consciences but refused to take the oath of supremacy. Conscience could not be appeased even after the King's authority was established. Moreover, again, when facing Cranmer's objection against the Six Articles, Henry showed a kind of tolerance and liberalness. These descriptions of Henry could be the ideal image of a king in Herbert's mind. Supporting individual conscience, a king should feel sorrow for those executed, and a king should tolerate dissent in his subjects.

That individual conscience precedes the authority of the royal supremacy echoes the main theme of Herbert's *De Veritate*; i.e., individual conscience has greater authority than worldly institutions. In the preface of *De Veritate*, Herbert appealed to people not to follow any authority, but to use their God-given faculties to obtain truths. Moreover, he maintained that worldly institutions often abused their authority, stirred disorder, and prevented people from finding refuge for their consciences.¹⁵² As Chapter 2 of this thesis has shown, conscience holds high authority in Herbert's theory of truth. 'By the high authority of the Common Notions' conscience examines 'not only what is good and evil, but also their different degrees'.¹⁵³ Furthermore, as the highest inner faculty, conscience is not only 'the court of the spirit and the body,' but also 'the court of God'.¹⁵⁴ Since the royal supremacy is a worldly institution, it

¹⁵² 'My reflections are free of authority and side no party and treat issues in the light of my independent judgment'. *DV*, 73.

¹⁵³ *DV*, 184.

¹⁵⁴ *DV*, 185.

has less authority than conscience in Herbert's theory.

Presenting both a defence of King Henry's royal supremacy and sympathy for the consciences of martyrs, Herbert's two levels of descriptions could not be found in other contemporary works. Sander's descriptions of martyrs always showed their fearlessness and carelessness about their deaths, and their expectation of the coming reward from God.¹⁵⁵ His narrations did not touch martyrs' struggles between saving their souls and saving their bodies.¹⁵⁶ When discussing the death of John Fisher, Sander stated that Fisher's final words were 'Te Deum laudamus, Te Dominum confitemur'.¹⁵⁷ Sander likewise wrote that when Thomas More was apprehended and taken into the Tower of London, he did not feel dread but entered it as if he were attending a feast.¹⁵⁸ More was like a man who was unconscious of the pain of his coming death. Moreover, the judges, who were eager to condemn More, showed only the evilness of human nature.¹⁵⁹ Furthermore, among all the martyrs, Sander paid more attention to Fisher's trial than to More's, which formed a sharp contrast with Herbert, who thought that More did not deserve to be killed since he kept silent during the trial. In Sander's mind, Fisher was the ideal representative of a holy Catholic, while More was not since he was appreciated much by Henry VIII and, according to Sander, he had two marriages in his life.¹⁶⁰ In addition, Sander used miracles or providential explanations to show the evilness of Henry's royal supremacy against

¹⁵⁵ For example, when the King threatened to throw two friars, Elston and Peto, into the sea, they were not afraid because they were of the right religion. Sander, *Rise and Growth of the Anglican Schism*, 114. The martyrs were, according to Sander, the 'blessed company' who 'entered the glorious lists for Christ' and 'obtained the reward of the heavenly calling'. Ibid., 117-8.

¹⁵⁶ In addition to Fisher and More, Sander also listed 21 martyrs in his works. See Ibid., 113-21.

¹⁵⁷ Ibid., 122.

¹⁵⁸ 'Thus this saintly man, at the very doors of the prison, which to most men is full of terror, amused himself as if he were at a feast.' Ibid., 111.

¹⁵⁹ 'The judge lost his temper and said, "Now I see, you dispute the law, for you are silent."' Ibid., 124.

¹⁶⁰ 'He [Fisher] was the light not of England but of Christendom, a model of holiness, the salt of the people, and a doctor of the Church' and 'there was not in England a more holy and learned man than John Fisher, bishop of Rochester'. Sander, *Rise and Growth of the Anglican Schism*, 66, 121.

martyrs, and the experience of More's daughter was an example.¹⁶¹ Since Sander was committed to showing the goodness of Catholic religion and the evilness of Henrician Schism, contradictory narrations existed when he discussed the suffering of martyrs.¹⁶²

Since both William Thomas and Edward Hall took defending King Henry as their priorities, their works did not touch on the double-edged sword dilemma of martyrs. Attaching himself to the Protestant party, but later executed by Queen Mary in 1554, Thomas condemned all the martyrs who disobeyed King Henry and his laws, including Fisher, More, and Cardinal Pole.¹⁶³ His established stance made him defend Henry's every policy and deed.¹⁶⁴ Like Thomas, Hall had no sympathy for the disobedient. Showing extreme hatred against Elizabeth Barton, who prophesied that Henry would soon die after he married Anne Boleyn, Hall spent more than three quarters of the chronicles of 1533 condemning Elizabeth Barton.¹⁶⁵ Moreover, as mentioned, Hall spoke cold-bloodedly of John Fisher, who traitorously believed in Elizabeth Barton's words.

Herbert's two levels of descriptions could also be seen from his discussions on the death of Anne Boleyn and on Henry's dissolutions of monasteries, both of which belonged to important issues of the Henrician Reformation and illustrated Herbert's

¹⁶¹ According to Sander, More's daughter, who 'gave large alms to the poor,' was a woman with great personality. When her father was executed by Henry, she found that she had no money to buy the shroud. At this time, a miracle occurred: suddenly there was enough money in her purse. 'But lo! She who knew too well that a few minutes before there was nothing in her purse, now found in it the price of the linen, nether more nor less than the sum she was then bound to pay. Comforted by the miracle, she took up the linen, wrapt her father's body therein, and honourably buried the martyr of Christ.' Ibid., 127.

¹⁶² For example, after Sander showed the cruelty of the judges in the trial of Thomas More, he said that 'all England mourned the dead [More]' – but Sander had just shown the cruelty of the English judges. Ibid., 126. Modern historians have also noticed Sander's inconsistency. See E. W. Ives, *The Life and Death of Anne Boleyn* (Malden, Mass.; Oxford: Blackwell, 2004), 39.

¹⁶³ Thomas, *The Pilgrim: A Dialogue on The Life and Actions of King Henry the Eighth*, 63.

¹⁶⁴ In order to justify Henry's marriage, William Thomas became well known for his slander of Anne Boleyn, who was usually attacked by Catholics such as Sander. Eric Ives described William Thomas as 'pseudo-intellectual hustler'. Ives, *The Life and Death of Anne Boleyn*, 48.

¹⁶⁵ Hall, *The Union of the Two Noble Families of Lancaster and York*, fol. cc.xviii-cc.xxiii.

emphasis on conscience. In addition to the first level of description defending King Henry's policy, the second level showed Herbert's sympathy for the death of Queen Anne due to his belief in the innocence of her conscience and in her moral character, and his disagreement with the second wave of the dissolution on grounds of conscience. In the case of the execution of Queen Anne in 1536, Herbert first separated her death from Henry, which formed the first level of description. He doubted that the Queen's death was the result of Henry's falling in love with Jane Seymour (1508-1537),¹⁶⁶ 'for I [Herbert] do not find him bloudy, but where Law...did countenance his Actions'.¹⁶⁷ By this statement it seemed that the Queen died because she infringed the law, not because Henry lost his loyalty to her. However, Herbert spent nearly six pages discussing the case, and gave a positive evaluation of the personality of Queen Anne, which formed the second level of description. He quoted the Queen's letters and confessions claiming her absolute innocence and recorded her last words when she was taken to the scaffold. In her last words, Anne, according to Herbert, not only did not blame Henry for her death but also blessed the King.¹⁶⁸ Even though it might not be a sincere speech, it was presented by Herbert for its goodness. In the end, Herbert said that the Queen's death was 'lamented by many, both as she was desirous to advance Learned men...and as she was a great Alms-giver; in so much, as she is said in three quarters of a year to have bestowed 14 or fifteen thousand pounds in this kinde, besides moneys intended by her towards raising a

¹⁶⁶ Different narrations on Jane Seymour were provided by Herbert's contemporaries. Edward Hall was happy to welcome this 'noble and gracious mother queen Iane', and when Jane died after she gave birth to Edward, Hall recorded that Henry was the most aggrieved person in the realm. Hall, fol. cc. xxxii. Sander, however, recorded that when 'the king was asked [by the doctor] which of the two lives [Queen Jane or Edward] was to be spared; he answered, the boy's, because he could easily provide himself with other wives'. Sander, *Rise and Growth of the Anglican Schism*, 138.

¹⁶⁷ *L&R*, 381b.

¹⁶⁸ 'But I pray God save the King, and send him long to reigne over you [the witnessed people].' *L&R*, 385b. It is possible that Anne Boleyn's last blessing for Henry VIII recorded by Herbert originates from Edward Hall's chronicles, who also recorded the same content. Hall, *The Union of the Two Noble Families of Lancaster and York*, fol. cc. xxviii.

Stock for poor Artificers in the Realme'.¹⁶⁹ This description of the charitable activity of Anne Boleyn likely came from the records of John Foxe's *The Acts and Monuments* (better known as *The Book of Martyrs*), and Herbert, after reading the records, chose to use these records.¹⁷⁰ Although Herbert did not blame Henry's cruelty, he did show his sympathy for Queen Anne and seemed to believe in the innocence of her conscience on grounds of her confession and good character.¹⁷¹

Sander and William Thomas still followed their established stances when discussing the case of Anne Boleyn, and did not take her conscientious confessions into consideration. Sander not only denounced Henry's lust but also propagated a monster legend of Anne.¹⁷² Sander recorded that Anne Boleyn was lustful and evil; she 'had a projecting tooth under the upper lip, and on her right hand [there were] six fingers'.¹⁷³ Moreover, Sander said that she committed incest with her brother George Boleyn, intending to obtain a male heir for Henry.¹⁷⁴ Although William Thomas had a different political stance from Sander, he slandered Anne with the same fervour. He was likely to speak with exaggeration that she committed incest with her brother and other courtiers due to her lust, and Henry 'was forced to proceed therein by way of open justice'.¹⁷⁵ Godwin was reserved to the accusation laid against Anne Boleyn,

¹⁶⁹ *L&R*, 386b.

¹⁷⁰ The statistic is exactly the same. 'Also, how bountifull shee was to the poore, passing not only the common example of other Queenes, but also the reuenues almost of her estate: in so much that the almose which she gaue in three quarters of a yeare, in distribution, is summed to the number of xiiij. or xv. thousand pounds. Beside the great peece of money which her grace intended to impart into foure sundry quarters of the Realme, as for a stocke there to be employed to the behoofe of poore artificers and occupiers'. John Foxe, *The Unabridged Acts and Monuments Online or TAMO*, 1583 (third edition) (HRI Online Publications: Sheffield, 2011), 1106, Available from <http://www.johnfoxe.org> [Accessed: 09.07.2015].

¹⁷¹ Herbert had felt it hard to gather reliable materials of Anne Boleyn. He was also unsure about the authenticity of an 'elegantly written' letter he quoted. See *L&R*, 384b. Herbert recorded some useful materials which were used by modern scholars since they were not extant. See Ives, *The Life and Death of Anne Boleyn*, 58.

¹⁷² Ives, *The Life and Death of Anne Boleyn*, 39.

¹⁷³ But a memoir by George Waytt (1550-1623) said 'the sixth finger' was a 'grace to her hand'. See footnote by David Lewis in Sander, *Rise and Growth of the Anglican Schism*, 25.

¹⁷⁴ *Ibid.*, 132-33.

¹⁷⁵ 'Inwardly she [Anne Boleyn] was all another damn than she seemed to be; for in satisfying of her carnal appetite, she fled not so much as the company of her own brother, besides the company of some

but he had neither sympathy nor interest in the truth of the case.¹⁷⁶ What concerned Godwin was the capricious and cruel nature of Henry,¹⁷⁷ and he even stated that German princes, ‘having heard of the lamentable and vnworthy (as they iudged it) end of the Queene, loathing the King for his inconstancy and cruelty,’ gave up their idea of cooperating with Henry on religious matters.¹⁷⁸

Similarly, Herbert’s second level of description concerning Henry’s dissolution of the monasteries showed that Herbert’s conscience disagreed with the coercion involved in the second wave of the dissolution. In the first level, Herbert defended Henry’s decisions by inventing two fictional speeches of members of Parliament who provided justifications for the first wave of the dissolution of the monasteries. Their justifications included that monasteries possessed too much land, that they became the lodges of idle people, and that they nourished ‘a Seminary of factious Persons that oppose your Supremacy’, and made many disorders by ‘stirring sedition in your Highnesse Kingdome, at the same time that some forreigne Power should invade it’.¹⁷⁹ However, when Herbert found that the monasteries suffered too much, especially after Cromwell’s furious attacks on them,¹⁸⁰ he refused to justify the second wave of the dissolution approved by Parliament in 1534, i.e. the Act of Suppression of Religious Houses. His conscience could not agree with the attacks of the second wave of the dissolution on the monasteries. Instead, he showed his

three or four others of the gallantest gentlemen that were about the King’s proper person’. Thomas, *The Pilgrim: A Dialogue on The Life and Actions of King Henry the Eighth*, 56.

¹⁷⁶ Godwin put more effort into narrating the cruelty of Henry and the calamity of Henry Norris, who was accused of having an affair with Queen Anne. ‘That in his [Norris’s] conscience he thought her [Anne] guiltless of the objected crime, but whether she were or no, he could not accuse her of anything: and that he had rather vndergo a thousand deaths, then betray the Innocent. Vpon relation whereof the King cryed out, Hang him vp then, Hang him vp then.’ Godwin, *Annales of England*, 139.

¹⁷⁷ ‘At what time the King so hot in the pursuit of his loue, preferred the enioying of this Lady beyond his Friends, his Estate, his Health, Safeguard, and his onely Daughter...So that the Court of England was now like a Stage, whereon are represented the vicissitudes of ever various Fortune.’ Ibid., 141, 143.

¹⁷⁸ Ibid., 141-42.

¹⁷⁹ *L&R*, 396a-398a.

¹⁸⁰ *L&R*, 398a-399a.

sympathy for those who had suffered by the act. He said that these monasteries were ‘lamented by many, and no waies so excused that I know’.¹⁸¹ Moreover, Herbert stated that some money taken from the dissolution of the monasteries was taken for secular pursuits, and that this was one of the causes of the northern rebellion that occurred in 1536.¹⁸² Furthermore, when the actions of the dissolution were ‘being by some openly called Rapine and Sacriledge,’ Herbert showed his disappointment about the outcome of the dissolutions, and confessed that ‘I will no way excuse’ these violent deeds.¹⁸³ This confession formed the second level of his descriptions. In brief, Herbert was, at least in the beginning, in favour of the dissolution of the monasteries, but the developments that followed exceeded his expectation, and the cruel actions against monasteries could not be accepted by his conscience. In the end, Herbert had no choice but to write ‘So that although I cannot but pity the ruine of so many pious Foundations...yet I have thought fit to mention these particulars, that it may appear to forreign Nations wee are not destitute of many Monuments of Devotion’. Those particulars were that Henry did use some money he gained from the dissolutions to increase the numbers of Colleges and professors in some universities, and to erect some new bishoprics.¹⁸⁴ On the one hand, he conceded that Henry had caused some damage, but on the other hand, Herbert consoled himself that the King had saved some money to do something good.

Herbert’s two levels of descriptions on the King’s reform of the monasteries were also absent among other contemporary authors. Opposed to every action of Henry’s dissolution of the monasteries, Sander was of the opinion that Henry coveted the

¹⁸¹ *L&R*, 375b. Also see Jackson, ‘Lord Herbert of Cherbury and the Presentation of the Henrician Reformation in His Life and Raigne of King Henry the Eighth’, 147.

¹⁸² *L&R*, 377b, 410-11.

¹⁸³ *L&R*, 444.

¹⁸⁴ *L&R*, 444.

possessions and that ‘all the monasteries were destroyed’.¹⁸⁵ Supporting every deed of Henry, William Thomas said that Henry dissolved the monasteries since ‘there were discovered hypocrisies, murders, idolatries, miracles, sodomies, adulteries, fornications, pride, and not 7, but more than 700,000 deadly sins’, and that the King was so kind that he granted pardons to many clergymen.¹⁸⁶ Neither justifying nor denouncing Henry’s deeds, Godwin said that Henry chose a dangerous step by demolishing ‘all the Monasteries throughout England’ since the ‘coronation of the new Queene, and other passages of entertainment, had exhausted the Treasury’.¹⁸⁷ Besides, ‘few were found guiltless’ under the tyrannical actions of Cromwell and ‘these things of themselves were distastfull to the vulgar sort’.¹⁸⁸

The presentation of the conflict between the royal authority and conscience sheds some light on Herbert’s *The Life and Raigne*. This was not ‘an unmeasured eulogy of Henry VIII’s statesmanship, and a laboured endeavour to condone the crimes of his private life,’ as Sir Sidney Lee commented,¹⁸⁹ nor was it a work which ‘palliated the enormities of Henry VIII,’ as Horace Walpole wrote.¹⁹⁰ As shown above, although Herbert in appearance often chose to defend the King, he did insert his implicit criticism in the second level of description. A typical example was the decision of Henry to remove the relic of Thomas Becket, Archbishop of Canterbury in the time of Henry II. Though Herbert agreed with Henry’s decision, he did not forget to record Henry’s greediness by saying that the King ‘seised on that immense Treasure and Jewels which were offered to his Shrine...among which, there being one stone

¹⁸⁵ Sander, *Rise and Growth of the Anglican Schism*, 130, 136.

¹⁸⁶ Thomas, *The Pilgrim: A Dialogue on The Life and Actions of King Henry the Eighth*, 43–44. ‘The friars and nuns were as whores and thieves in the open street, and there were saints that made the barren women bring forth children,’ and ‘if all the substance had been converted to the poor, the poor should have become richer than the princes and nobles’. Thomas, 50.

¹⁸⁷ Godwin, *Annales of England*, 135.

¹⁸⁸ Godwin, 145.

¹⁸⁹ *AB*, xxxviii, 142–43.

¹⁹⁰ Horace Walpole, *A Catalogue of the Royal and Noble Authors of England*, vol. 1 ([Twickenham]: Printed at Strawberry-Hill, 1758), 191.

eminent...[and] our King wore it afterwards'.¹⁹¹ Moreover, Herbert was fully aware that he defended the King in some aspects only, implying that he had limited support for the King and his royal supremacy. After recording a series of the statutes about the King's marriage and succession in 1536, Herbert said that 'I wil not yet take on me every where to defend the actions of a Prince',¹⁹² and then he commented that Henry did not always obtain his glory during his life:

I cannot but observe him, that if where he did ill, he made or found many Complices; where he did well, he had almost the Glory alone; as being so active and knowing in all he undertook, that he was capable of both: Only towards his latter time, as he was thought to decline in his singular perfections of Nature, so all things almost fell to the worse; while divers of those ill accidents which befel him, were reveng'd sometimes with so severe a justice, as might be called *Summum Jus*. ... In procuring [his wants] whereof, though he lost much of his former love and esteem, yet he kept himself still upon the high steps of Authority, without stooping either to fear or necessity; so that his most irregular actions represented such a Type of greatnesse.¹⁹³

To Herbert, Henry was certainly not an ideal king, but he admitted that King Henry was a great king because he was superior to others in some ways, or because he was protected by providence when he was young. Secondly, since Herbert valued the individual's conscience, the conflict between the royal supremacy and conscience makes it possible to investigate the extent to which he supported the royal supremacy. The same investigation could not be applied to other contemporary works on the history of King Henry VIII since they either gave full support for Henry, or aimed to condemn him. Since 'conscience must be taught not forced' by the possible death penalty of laws of the royal supremacy,¹⁹⁴ in Herbert's view conscience precedes the

¹⁹¹ *L&R*, 437-38.

¹⁹² *L&R*, 399b.

¹⁹³ *L&R*, 399b-400b.

¹⁹⁴ *L&R*, 447.

authority of the royal supremacy, and this consideration marks the limit of the King's power over the Church. Just as this chapter argues that Herbert displayed only limited support for royal supremacy, so the next chapter will suggest that Herbert had a similar view on the royal prerogatives. He believed that the royal prerogatives were not unlimited and that Parliament had the authority to prevent the consciences of the people from being coerced by the King's unlawful commands.

Chapter 4: The Relationship between the King and Parliament

After Charles ascended the throne in 1625, he clashed with Parliament on many occasions, including over taxes levied without parliamentary consent and over the imprisonment of subjects without cause shown. In response, Parliament used its power to impeach royal favourites such as the Duke of Buckingham, Herbert's patron, and Richard Montagu, while Charles protected them and attacked disobedient subjects by using his royal prerogatives.¹ The conflicts between the two powers raised various constitutional questions, such as whether Parliament was created by the King and could only provide suggestions when the King requested them, or whether Parliament had the power to examine and adjudicate on every issue in the kingdom, including the commands issued from the royal prerogatives.²

As a member of the Council of War from 1625 till around 1640,³ Herbert was a first-hand observer of these conflicts. John Selden, Herbert's life-long friend, helped draw up the Petition of Right, protesting the King's illegal taxations and imprisonment of subjects without showing due cause.⁴ In 1642, shortly before the outbreak of the Civil War between the King and Parliament, Herbert left for York to join the King, but later retired to Montgomery castle when his career at the royal court ended.

¹ David L. Smith, *The Stuart Parliaments, 1603-1689* (London: Arnold, 1999), 113–19; Leo F. Solt, *Church and State in Early Modern England, 1509-1640* (New York: Oxford University Press, 1990), 169–78.

² Ulrike Müßig, 'Constitutional Conflicts in Seventeenth-Century England', *The Legal History Review* 76, no. 1–2 (1 March 2008): 27–47.

³ As indicated in footnote 75 of Chapter 3, Kimmelman, based on a letter dated 6 May 1625, discovered that Herbert became a member in this year. Eugene Hill, in the chronology of Herbert's life, also stated that Herbert became a member of the King's Council of War in 1624. See Hill, *Edward, Lord Herbert of Cherbury*, preface. The record in the Calendar of State Papers supported this statement. It shows that on 12 December 1626 Herbert had participated in discussing an abuse in the navy with other members such as Sir Robert Cotton. William Douglas Hamilton, ed., *Calendar of State Papers, Domestic Series, of the Reign of Charles I* (London, Longman, Brown, Green, Longmans, & Roberts), vols XLI, 494–495.

⁴ Smith, *The Stuart Parliaments, 1603-1689*, 116.

Herbert's view of the relationship between the King and Parliament has never been thoroughly examined. His attitude on that subject has remained unclear, since scholarly interpretations of Herbert have focused on his conduct at court, rather than his ideas about contemporary issues of religion and politics.⁵ Sir Sidney Lee's influential 'A Continuation of the Life of Edward, Lord Herbert of Cherbury from 1624 to 1648' devoted much space to Herbert's conduct at court, and maintained that Herbert was anxious to obtain royal recognition.⁶ Lee's work did not discuss Herbert's opinion on the conflicts between Charles and his Parliaments. Similarly, for the period of the English Civil War, interest has been concentrated on Herbert's personal conduct – Herbert joined the King in the beginning, but surrendered without resistance to the parliamentary army in 1644, in return for a pension from the Long Parliament –⁷ rather than on his view of the war. Lee argued that Herbert was 'determined to save his property at the expense of his honour,'⁸ while Ronald Hutton wrote that Herbert 'was escorted happily into retirement at London, out of reach of the enraged Royalists'.⁹ They both focused on Herbert's abandonment of the King and of his kinsmen who remained in the royalist camp such as his eldest son Richard

⁵ After Herbert was recalled by King James from the ambassadorship to France in 1624, his career shifted to the court where he stayed for the following two decades.

⁶ Lee's work argued that when Charles I had conflicts with his Parliaments during the 1620s, Herbert exploited every opportunity to obtain royal recognition. Moreover, Lee wrote that in 1630 Herbert completed *The Expedition to the Isle of Rhe*, a work in defence of Buckingham's disastrous military campaign in 1627, and he 'apparently expected a fee for the performance'. *AB*, 142. To see how later scholars were influenced by Lee's work, see the first section of Chapter one above. Lee's argument can be challenged, since seeking and taking an office at court did not mean that one had to agree with opinions of the King. In the seventeenth century it was common, as Powers-Beck has shown, to see members of aristocratic families to seek positions at court, and this was also the case of the Herberts, who had been a court family since the fifteenth century. Herbert, being the eldest son, was expected to acquire some political achievements, and he had to shoulder his other five brothers' annuities. Jeffrey P Powers-Beck, *Writing the Flesh: The Herbert Family Dialogue* (Pittsburgh, Pa.: Duquesne University Press, 1998), 5–6, 126.

⁷ *AB*, 153.

⁸ *AB*, 153.

⁹ Ronald Hutton, *The Royalist War Effort, 1642-1646* (London: Routledge, 1999), 150. Gardiner also wrote that 'the brilliant and versatile owner [Herbert] spent the remainder of his days as a pensioner of that Parliament'. Samuel Rawson Gardiner, *History of the Great Civil War, 1642-1649*, vol. 2 (London: Longmans, Green, 1889), 33.

Herbert and his brother Sir Henry Herbert. What these commentators did not notice was that Herbert shared many ideas with parliamentarians, as this chapter will demonstrate.

Focusing on Herbert's view of the relationship between the King and Parliament, this chapter argues that Herbert agreed at least to some extent with those parliamentarians who emphasized that Parliament held the highest authority in the kingdom, that the King should seek the advice of Members of Parliament on matters of Church and State, and that Parliament, not the King, was best able to protect the people's consciences from the oppression of the King's unlawful commands. The first section in this chapter will analyze Herbert's career and his personal relationships to see who had an intellectual connection with him during the latter part of his life. Herbert not only maintained friendships with scholars he had been acquainted with before, but also continued broadening his networks, including among members of the Lower House who upheld the authority of Parliament and denounced Charles's abuse of his prerogatives. By examining *The Life and Raigne of King Henry the Eighth*, the second section will discuss the interactions between King Henry and members of Parliament and the authority of both Houses. Herbert argued that Henry put much effort into persuading members of Parliament, and that he greatly respected Parliament's advice. Moreover, Herbert exploited the authority of parliamentary speeches to show his viewpoints, indicating that he thought their speeches held high authority. The third section will examine Herbert's private collections currently deposited in the National Library of Wales. These collections strongly suggest that Herbert was concerned about the abuse of the King's power, and believed that Parliament could save the people from the moral dilemmas caused by the abuse.

The discussion of Herbert's thought should not be confined to his philosophical work *De Veritate* (published in 1624) and his three religious works completed in his

later years,¹⁰ because Herbert's history of King Henry and his manuscripts are crucial to understanding his view on the clashes between King Charles and Parliament.¹¹ The general impression among modern scholars has been that Herbert spent most of his energy on seeking positions at court and paid little attention to developing his thought. Yet this chapter will show that Herbert was deeply interested in, and thought carefully about, contemporary constitutional issues.

¹⁰ *De Religione Laici*, *De Religione Gentilium*, and *A Dialogue Between A Tutor and his Pupil*.

¹¹ See section 1.1 above.

4.1 Herbert's career and personal relationships, 1624-1648

After Herbert was recalled from the position of Ambassador to France in 1624, he started providing service and obtained some achievements at court. As mentioned in Chapter 1 above, he was created Baron of Cherbury in 1629, and was a member of the Council of War from 1625 to 1640 and a member of the House of Lords in the Short Parliament.¹² During this period, one of the main focuses of Herbert's scholarly and antiquarian interests was the history and authority of Parliament. Before leaving the office of Ambassador to France, he had been acquainted with many Continental scholars such as Isaac Casaubon, Gerard Vossius, Hugo Grotius, Pierre Gassendi, and Marin Mersenne.¹³ This network of scholars lasted into the later years of Herbert's life.¹⁴ Herbert was also acquainted with contemporary English scholars, among whom Sir Robert Cotton was an important one. Herbert met Cotton while he served on the Council of War,¹⁵ since Cotton was also on the Council in the 1620s. Moreover, Herbert used the resources of the Cotton Library when writing the history of King Henry VIII. Herbert must have been influenced by Cotton in various ways, especially in his antiquarian interest in Parliament. A manuscript of Herbert's collection entitled 'Of the Antiquity of Parliament' (E5/3/30) revealed this influence, since it contained a small treatise written by Cotton. Herbert also collected *Judicature of Parliament* (E5/3/35 and E5/3/36) and *Modus Tenendi Parliamentorum* (E5/3/41), both of which

¹² Thomas Birch, *The Court and Times of Charles the First: Containing a Series of Historical and Confidential Letters, Including Memoirs of the Mission in England of the Capuchin Friars in the Service of Henrietta Maria, and a Variety of Other Particulars Not Mentioned by Our Historians*, vol. 1 (London: Henry Colburn, 1849), 20–21. On 8 May 1635 Herbert had proposed 'projects of a Frenchman concerning inventions of ships, guns, and other devices'. See Hamilton, *Calendar of State Papers, Domestic Series, of the Reign of Charles I*, vols CCLXXXIII, 62. For other records of Herbert in the Council of War, see Hamilton, vols CCXCV, 322; CCCLVII, 158; CCCLXI, 224.

¹³ *AB*, 56, 132–33, 158; R. W. Serjeantson, 'Herbert of Cherbury before Deism: The Early Reception of the De Veritate', *The Seventeenth Century* 16, no. 2 (2001): 218–20.

¹⁴ In 1647 Herbert visited Gassendi in France. *AB*, 158.

¹⁵ Hamilton, *Calendar of State Papers, Domestic Series, of the Reign of Charles I*, vols XLI, 494–495.

were written by Cotton's friend Henry Elsyng (bap. 1577-1635), clerk of the parliaments.¹⁶ This selection indicated that Herbert shared with them an interest in Parliament.

John Selden, who devoted much effort to opposing the King's abuse of power in the Commons, was another important figure who probably greatly influenced Herbert in the latter part of his life. The two men had started sharing many ideas and exchanging frequent letters from the time of Herbert's embassy to France.¹⁷ For instance, in a letter dated 3 February 1619, John Selden complained to Herbert about the King's suppression of his *History of Tithes* (published in 1618).¹⁸ In the 1620s Selden became an important figure of the parliamentary opposition. Selden helped to impeach the Duke of Buckingham, Herbert's patron, in the 1626 Parliament.¹⁹ In 1627 Selden was the counsel defending Sir Edmund Hampden, who was imprisoned by way of royal warrant without cause shown, since he refused to pay the Forced Loan.²⁰ Resisting the abuse of royal prerogatives, Selden held that Hampden should be bailed, and insisted that imprisonment be made 'by the constant and settled laws of this kingdom'.²¹ In the 1628 Parliament, again, Selden opposed King Charles in levying tonnage and poundage without the consent of Parliament, and he helped to

¹⁶ The Cotton Library had copies of both manuscripts (Colin G. C Tite, 'The Cotton Library in the Seventeenth Century and Its Manuscript Records of the English Parliament', *Parliamentary History* 14, no. 2 (2008): 131.), and Herbert must have had access to them in the 1630s. For Cotton and Elsyng's intellectual connection, see Elizabeth Read Foster, *The Painful Labour of Mr. Elsyng* (Philadelphia: American Philosophical Society, 1972), 37. Moreover, both works circulated from mid 1620s in the hands of those who were interested in Parliament, see Elizabeth Foster, 'Introduction', in Henry Elsyng, *Judicature in Parlement*, ed. Elizabeth Read Foster (London: Continuum International Pub. Group, 1991).

¹⁷ A letter from Selden to Herbert, February 1620, survived. See British Library Add MS 32092, f. 314.

¹⁸ John Aikin, *The Lives of John Selden, Esq., and Archbishop Usher* (London, Printed for Mathews and Leigh, 1812), 29–30. For the controversy derived from this work, see Solt, *Church and State in Early Modern England, 1509-1640*, 156–57.

¹⁹ Richard Tuck, "'The Ancient Law of Freedom': John Selden and the Civil War", in *Reactions to the English Civil War, 1642-1649*, ed. J. S Morrill (New York: St. Martin's Press, 1983), 141.

²⁰ This belonged to the Case of the Five Knights or Darnel's Case.

²¹ Samuel Gardiner, *The Constitutional Documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1906), 59.

draw up the Petition of Right.²² Herbert was very likely to be concerned about the parliamentary opposition's effort in the Commons, since he collected a manuscript entitled 'Arguments in [the 1628] Parliament concerning the liberty of the subject' (E5/3/34) with Selden's statements.²³ Herbert maintained friendship and intellectual connection with Selden, even though they belonged to different camps in the English Civil War. Herbert's religious treatise *De Religione Gentilium* (completed in the 1640s) was influenced by Selden's *De dis Syris*,²⁴ and Selden was one of the executors of Herbert's will after he died.²⁵

Another piece of evidence also suggests that Herbert continued building his networks of contemporary scholars and collecting manuscripts related to Parliament during the 1630s and the 1640s. According to William Lewis, Herbert had complained 'to the Famous Archbishop Usher, of the Difficulties and Obstructions he met with, in procuring the Learned Mr. Camden's Books'.²⁶ These complaints implied that Herbert had some interactions with James Ussher (1581-1656), a well-known scholar, during that period, though Ussher must have known Herbert when he joined the Irish peerage and was created Lord Herbert of Castle Island in 1624.²⁷ Their common friends included John Selden, Sir Robert Cotton, and Gerardus Vossius.²⁸ The statement of Lewis also showed that Herbert was interested in the works of William Camden, an antiquarian and historian. Herbert in fact also collected Camden's treatise

²² Smith, *The Stuart Parliaments, 1603-1689*, 116.

²³ For a more detailed discussion on the content of the manuscript, see section 1.2.

²⁴ Woolf, *The Idea of History in Early Stuart England: Erudition, Ideology, and 'The Light of Truth' from the Accession of James I to the Civil War*, 137.

²⁵ See the letter from John Selden to Sir Henry Herbert, dated on Nov. 1, 1648. Rebecca Warner, *Epistolary Curiosities: Series the First: Consisting of Unpublished Letters of the Seventeenth Century, Illustrative of the Herbert Family, and of the Reigns of James I., Charles I., Charles II., James II., and William III.* (Bath: Printed by R. Cruttwell, 1818), 39–40.

²⁶ Herbert, *The Antient Religion of the Gentiles*, ix.

²⁷ See the letter from Sir Henry Bourghier to James Ussher, 5 January 1624 in Charles Richard Elrington, ed., *The Whole Works of the Most Rev. James Ussher, D.D., Lord Archbishop of Armagh, and Primate of All Ireland*, vol. 16 (Dublin: Hodges, Smith, and Co., 1864), 417–18.

²⁸ Herbert's friendship with Ussher lasted to the end of Herbert's life. Ussher was recorded as the person who refused to do the sacrament for Herbert before his deathbed. John Aubrey, *Aubrey's Brief Lives*, ed. Oliver Lawson Dick (London: Secker and Warburg, 1950), 135.

on the antiquity of Parliament (a part of E5/3/30), indicating that they had this common interest. In addition to Lewis's statement, Herbert collected various parliamentary materials when he was a Member of the Lords in the Short Parliament.²⁹

It might be objected that Herbert, on the other hand, had friends such as John Donne, who faithfully supported the King's policies,³⁰ and that Herbert's patron the Duke of Buckingham was a great enemy of the Commons. However, these facts do not contradict the argument that Herbert had a strong interest in Parliament, and that Herbert maintained a friendship with Selden, who denounced the King's abuse of his prerogatives. Moreover, no evidence showed that Herbert shared with Donne and Buckingham any opinion regarding the relationship between the King and Parliament. As the third section of Chapter 3 above has shown, Herbert did not accept the theory of the divine right of kings, while Donne obediently preached it after King James gave him positions in the Church. Herbert carefully answered the King's requests as he had done in the case of 'On the King's Supremacy in the Church',³¹ while Donne often gave way to the King's demands.³² Similarly, Herbert had no intellectual connection with Buckingham, though they maintained the patron-client relationship till Buckingham was assassinated in 1628.³³

²⁹ These materials included 'Resolutions in Parliament against Ship Money 1640, December 7' (E5/3/17), 'The King's Speech to Both Houses of Parliament 1641, January 23' (E5/3/22), and four other resolutions and proceedings of the Short Parliament.

³⁰ By 1606 Herbert might have been acquainted with Donne in the social circles in London, when Donne frequently visited his mother Magdalen Herbert. R. C. Bald, *John Donne, a Life* (New York: Oxford University Press, 1970), 184. Donne was the preacher in the funeral of Lady Herbert. They had also exchanged verses before entering the court. For the poem written for Herbert ('To S^t Edward Herbert at Iuliers'), see Herbert John Clifford Grierson, ed., *The Poems of John Donne*, vol. 1 (Oxford: Clarendon Press, 1912), 193–95.

³¹ Herbert stressed the powers kings should not assume, as chapter 3 has shown.

³² In 1622 Donne was enlisted by King James to defend *Directions Concerning Preachers*, which imposed restrictions on speeches of ministers and Church lecturers, and he obediently defended it in his sermon. Annabel Patterson, 'Misinterpretable Donne: The Testimony of the Letters', *John Donne Journal*, no. 1 (1982): 39–53; Jeanne Shami, 'Kings and Desperate Men: John Donne Preaches at Court', *John Donne Journal: Studies in the Age of Donne* 6, no. 1 (1987): 9–23.

³³ *AB*, 98n.

This section has argued that Herbert maintained intellectual connections with Cotton and Selden, and that he had an interest in collecting manuscripts related to Parliament. In *The Life and Raigne* he also provided lengthy narrations on parliaments' proceedings. The next section will reveal his interest in the history and authority of Parliament.

4.2 The concord of King and Parliament in *The Life and Raigne of King Henry the Eighth*

Herbert started writing *The Life and Raigne of King Henry the Eighth* in 1632 when Charles's Personal Rule entered its fourth year.³⁴ Charles I, the patron of the work, distrusted his Parliaments, and he often resorted to violent measures to silence disobedient subjects. In the 1628 Parliament Charles clashed fiercely with the Commons when it strongly opposed his religious policies, his imprisonment of subjects without showing cause, his levying of tonnage and poundage, and the Forced Loan.³⁵ Faced with this opposition, Charles used his royal prerogatives to dissolve Parliament and to imprison nine ringleaders of the Commons.³⁶ After the clash, Charles's distrust of Parliament deepened, and he was determined not to summon another Parliament for as long as he could.³⁷ Charles's relationship with Parliament formed a sharp contrast with Henry's in the history of King Henry VIII Herbert was to write – Henry successfully controlled Parliament, and from 1529 till Henry's death Parliament sat almost every year.³⁸ In the following paragraphs this section will show that Herbert used *The Life and Raigne* to express his disagreement with Charles's

³⁴ For Charles's intention to commission Herbert to write the history of King Henry VIII, see the last two paragraphs of section 3.1. In the 1630s Herbert completed three versions of *The Life and Raigne*. They are now Jesus College MS 71-74, Ashmole 1143, and Bodleian Library MS 910.

³⁵ The ending scene of this Parliament was particularly dramatic. Holding down the Speaker Sir John Finch in his chair, Denzil Holles prevented him from announcing an adjournment by the King's command. Smith, *The Stuart Parliaments, 1603-1689*, 118; Cust, *Charles I: A Political Life*, 118. Sir John Eliot, then, read the Protestation of the Commons, stating that anyone introducing 'Popery or Arminianism,' levying tonnage and poundage or paying them should 'be reputed a capital enemy to the kingdom and commonwealth'. Gardiner, *The Constitutional Documents of the Puritan Revolution, 1625-1660*, 82.

³⁶ Charles intended 'to prevent the finishing of that Remonstrance, and other dangerous intentions of some ill-affected persons'. See 'The King's Declaration Showing the Causes of the Late Dissolution,' in Gardiner, *The Constitutional Documents of the Puritan Revolution, 1625-1660*, 86.

³⁷ After the 1628 Parliament Charles agreed with the hardliners in the Privy Council, including the Earl of Dorset and Bishop William Laud, that summoning a Parliament could not provide the money he needed, but only gave a political battlefield to the opposition. Richard Cust, *Charles I, the Privy Council and the Parliament of 1628* (London: Royal Historical Society, 1992), 26.

³⁸ Parliament continued to sit annually till 1559. See Jennifer Loach, *Parliament under the Tudors* (Oxford: Oxford University Press, 1991), 4.

treatment of Parliament and its Members, and to draw attention to the high authority of Parliament.

Herbert devoted much more space to the role of Parliament than contemporary historians of King Henry VIII, revealing his strong interest in Parliament. As we saw in Chapter 3 above, Herbert devoted lengthy paragraphs of *The Life and Raigne* to showing how Parliament helped King Henry establish the Anglican Church and dispel the papal supremacy.³⁹ By contrast, Parliament's role in the Reformation was largely omitted by Nicholas Sander, William Thomas, and Edward Hall. Sander in his *Rise and Growth of the Anglican Schism* strove hard to blame Henry for subverting the Pope's authority, and ignored the role of Henry's parliaments. William Thomas, who concentrated on demonstrating the clemency and ability of Henry, mentioned Parliament only three times in his *The Pilgrim: A Dialogue on The Life and Actions of King Henry the Eighth*. Even Edward Hall, who was elected more than three times as a member of the Commons during Henry's reign, only occasionally discussed the actions of Parliament in his chronicle,⁴⁰ focusing instead on defending the King's deeds.

In *The Life and Raigne*, Parliament received much respect and attention from King Henry. Herbert stated that Henry, who enjoyed Parliament's full support, laid great emphasis on his relationship with it since 'he accounted it as his most loyall Spouse: and not without reason, since there was nothing I [Herbert] know desired by him, which they performed not'.⁴¹ This statement could be taken to mean that Parliament has a responsibility to give its full support for the policies of the Crown, and that Herbert intended to reproach Charles's parliaments for putting insufficient

³⁹ For examples of Herbert's discussions of the main issues of the Reformation Parliament (1529-1536), see *L&R*, 292-297, 319-321, 329-331, 344-346, 362-367, 380-382, 389-391, 375b-376b.

⁴⁰ Peter C. Herman, 'Hall, Edward (1497-1547)', *The Oxford Dictionary of National Biography*, accessed 13 June 2016, <http://www.oxforddnb.com/view/article/11954>.

⁴¹ *L&R*, 503.

enough effort into satisfying the King. As we will see, however, it is much more likely, that Herbert's intention was to call on the Crown to respect Parliament and accept its advice, rather than to demand that Parliament accept the King's every policy and demand. In addition, Herbert argued that Henry summoned his Parliament because he was seeking its suggestions, its implementation of his policies, or a grant of subsidy.⁴² This argument suggests that the key to King Henry's success was his close cooperation with Parliament.

According to Herbert, Henry responded to parliamentary opposition with persuasion rather than violence. This response showed that Henry respected Members of Parliament's different opinions, and it also formed a sharp contrast with the conduct of King Charles I, who imprisoned disobedient members and dissolved Parliament arbitrarily. In 1523 when Henry asked Parliament to grant a taxation of four shillings in a pound – the highest rate ever – some in the House of Commons worried that the commerce and 'the shipping of the Kingdom must decay'.⁴³ However, after Thomas More, the speaker of the Commons at that time, asked everyone to 'lay aside those poore scruples, and doe what may be worthy the dignity and honour of our Nation',⁴⁴ the Commons finally granted a taxation of two shillings in the pound.⁴⁵ Similarly, in 1532 a Member of Parliament 'motion'd that they all should petition the King, to take his Queen Kathrine [Catherine] againe';⁴⁶ however, his opposition subsided after the King sent Thomas Audley, who succeeded More as the speaker of the Commons, to persuade him and by exhibiting the studies of several

⁴² Similar conclusions have been reached by scholars. See for example Loach, *Parliament under the Tudors*, 5.

⁴³ L&R, 144. Similar presentation could be seen in Hall's chronicle, see Edward Hall, *Hall's Chronicle: Containing the History of England, during the Reign of Henry the Fourth, and the Succeeding Monarchs, to the End of the Reign of Henry the Eighth*, ed. Henry Ellis (London: Published for J. Johnson, 1809), 656–57.

⁴⁴ L&R, 145.

⁴⁵ In this session, the Commons gave Henry the largest grant of his reign so far. See Loach, *Parliament under the Tudors*, 59.

⁴⁶ L&R, 335. Similar presentation please see Hall, *Hall's Chronicle*, 788.

European universities and ‘a Hundred books of several Doctors confirming the same opinion [that the marriage was unlawful]’.⁴⁷ In brief, according to Herbert, Henry put much effort into persuading those Members of Parliament who expressed their reservations or even disagreement with the King’s requests.⁴⁸

In Herbert’s view, Parliament did not lose its power and authority even though Henry controlled Parliament successfully.⁴⁹ Herbert thought that Parliament’s resolution could not easily be overthrown. This was especially the case in the 1523 Parliament when it finally resolved to grant a taxation of two shillings in the pound to the King. Cardinal Wolsey was dissatisfied with the result and rushed to the Commons to say that ‘he desire’d to reason with those who oppos’d his demands [four shillings in a pound]’. However, the Commons answered that ‘it was the order of that House to heare, and not to reason, but among themselves’.⁵⁰ Although he was the most powerful person under Henry, Wolsey was not able to change the decision of the Commons.

Herbert also thought that laws enacted by Parliament held high authority. In his view, once a law was enacted, it could not be changed or repealed without Parliament’s permission even if it were a bad law; the only solution was to resort to

⁴⁷ *L&R*, 324-25.

⁴⁸ *L&R*, 325. Edward Hall had a very similar presentation about the above-mentioned two instances. Hall showed that Henry was able to court members of Parliament who disagreed with his plans. However, their presentations still had some differences. Hall, unlike Herbert, did not refrain from showing his defence of Henry and his dislike of the priestly class. As a member of the Reformation Parliament, Hall wrote that after the King’s divorce was settled by Parliament ‘all wyse men in the Realme moche abhorred that marriage’. Hall, *Hall’s Chronicle*, 780. Furthermore, he described his colleagues who favoured the laws – the mortuary bill, a bill concerning probate, and a bill restraining pluralism and non-residence – as ‘the learned men’, a description Herbert did not adopt. *Ibid.*, 766. Loach wrote that Hall was more hostile to the clergymen than his colleagues were, something that might distort his records. See Loach, *Parliament under the Tudors*, 64.

⁴⁹ Herbert thought that Henry’s policies were naturally welcomed by his people and Parliament until 1536; by that year when the seventh session of the Reformation Parliament opened, Henry still enjoyed ‘the Love and Obedience of his subjects’. *L&R*, 404a. Henry continued receiving Parliament’s support in his later years, since Henry’s authority and prestige remained in the minds of subjects. *L&R*, 399b-400b, 571.

⁵⁰ *L&R*, 146. CF: ‘Wherefore the Cardinall came again to the common house, and desired to be reasoned withall, to whom it was answered, that the fasshion of the nether house was, to heare and not to reason, but emong themselves’. Hall, *Hall’s Chronicle*, 656.

the enactment of the subsequent parliaments. When Herbert commented on those who suffered from the Act of Suppression of Religious Houses under 200 pounds yearly, he said that it was ‘lamented by many, and no waies so excused that I know’ since it was an established law.⁵¹ Similarly, when it came to the Six Articles, ‘the Bloody Statute’, Herbert suggested that the people’s best solution was to endure it and to hope that it was not strictly enforced –⁵² in addition to criticising the law itself, Herbert only explained Henry’s reason for enacting the law and stressed his clemency towards Thomas Cranmer’s open objection to it.⁵³

The point in the last paragraph in fact reflected Herbert’s own view on the authority of the laws of Parliament, since it was not an established view in Henry’s reign. Before Henry VIII ascended the throne, Henry VII used his prerogative power twice to amend bills passed by Parliament in 1497 and in 1504.⁵⁴ The King’s prerogative discretion was passed over in silence by Herbert. Moreover, modern scholar Jeffrey Goldsworthy has found that the authority of law became firmer after Queen Mary repealed the anti-Catholic laws through the authority of Parliament – at the same time that the Queen rejected Cardinal Pole’s idea that repealing the laws was unnecessary since they were in themselves invalid.⁵⁵ After Elizabeth succeeded, she followed the same procedure to repeal Mary’s laws favouring the Catholics, which reinforced both the authority of Parliament and its laws.

In *The Life and Raigne*, Herbert seemed to avoid using the phrase ‘the high court of Parliament’, a phrase which could be commonly seen in his sources.⁵⁶ Edward

⁵¹ *L&R*, 375b.

⁵² *L&R*, 446-49.

⁵³ ‘Onely I finde the King sent to him [Cranmer] for a Copy of them [the Six Articles], and misliked not his freedom, as knowing all he spake was out of a sincere intention’. *L&R*, 448.

⁵⁴ Loach, *Parliament under the Tudors*, 3.

⁵⁵ Goldsworthy, *The Sovereignty of Parliament History and Philosophy*, 54–55; D. M Loades, *Tudor Government: Structures of Authority in the Sixteenth Century* (Oxford, UK; Malden, Mass.: Blackwell Publishers, 1997), 45–46.

⁵⁶ Herbert used the phrase ‘the high court of Parliament’ only once when transcribing the whole speech

Hall in his chronicle used ‘the high court of Parliament’ frequently,⁵⁷ which Herbert must have been very familiar with, since Hall’s chronicle was the basis of his work. Moreover, when introducing the enactment of the Act in Conditional Restraint of Annates in 1532, Herbert transcribed some sentences from original records,⁵⁸ but he did not transcribe the phrase ‘the high court of Parliament’.⁵⁹ Herbert continued omitting the phrase in the later enactment on the succession.⁶⁰ However, Herbert’s avoidance of the phrase does not indicate that he had any less regard for Parliament’s authority. Herbert’s lengthy discussion on Parliament could not be denied, and, as I will show in the next section, Herbert owned various manuscripts on the authority of Parliament, including one entitled ‘Discourse on the high court of Parliament and the authority of the same’. Herbert avoided using the phrase ‘the high court of Parliament’ most likely because he was aware of Charles I’s dislike of Parliament’s restraint of his power – the concept of Parliament as a high court implied that Parliament could examine any issue within the kingdom, including a command from the King, and contradicted the idea that ‘the King can do no wrong’; based on this concept, in 1642 the Long Parliament also claimed it had the final say on the public good.⁶¹

In *The Life and Raigne*, Members of Parliament’s opinions held high authority. Several times Herbert inserted his personal opinions into the fictional speeches addressed by Members of Parliament. Herbert first put a fictional speech into the 1529 Parliament after John Fisher openly attacked the Commons’ enactments against the abuses of the clergy. Through the mouth of an MP, Herbert presented his five religious

of Henry in the 1545 Parliament, but by that transcription he did not mean to stress the meaning of the phrase. See *L&R*, 534.

⁵⁷ Hall, *Hall’s Chronicle*, 527, 535, 555, 580, 583, 764, 816, 818.

⁵⁸ *L&R*, 331. For the original text, see J. R. Tanner, *Tudor Constitutional Documents, A.D. 1485-1603* (Cambridge: Cambridge University Press, 1922), 25–27. For the full text, please see *The Statutes of the Realm*, vol. III (Dawsons of Pall Mall, 1817), 385–88.

⁵⁹ *The Statutes of the Realm*, III:387.

⁶⁰ For textual comparison, see *L&R*, 396–99; *The Statutes of the Realm*, III:655–60.

⁶¹ Müßig, ‘Constitutional Conflicts in Seventeenth-Century England’, 41–46.

common notions: that ‘there [is] no Nation, that in some kind or other doth not worship God’, that the supreme Deity must be worshipped, that ‘Good life, Charity, Faith in, and love of God, [are] such necessary and essentiall parts of Religion’, that ‘a true Repentance towards God’ is needed to expiate one’s vice, and that there were ‘Rewards and Punishment’ after this life.⁶² Herbert invented two additional speeches supposed to have been made in 1533 when Parliament debated the divorce issue of the King and his first wife, and the royal supremacy. The former supported the supremacy of the Pope over the English crown, while the latter justified the royal supremacy via Herbert’s philosophical theory developed in *De Veritate*.⁶³ The last time Herbert adopted fictional speeches to present his opinion was when Parliament advised the King to dissolve monasteries, which later became the first wave of the dissolution Herbert supported. Two speeches supported the dissolution of monasteries.⁶⁴ The authority of Members of Parliament and their licence for free speech were probable reasons why Herbert presented his opinions through their mouths.

In the works of Edward Hall and William Thomas, Parliament was usually used as a defence or even as a scapegoat for King Henry’s violent deeds (as defined by Hall and Thomas), and Parliament’s role did not receive full attention. Responding to the suggestion that Henry broke from Rome to satisfy his personal ‘beastly appetite’,⁶⁵ Thomas said that ‘without [Parliament] he determined no great matter’.⁶⁶ In his account, the separation from Rome was performed by the enactment of Parliament, not arbitrarily by the King. Similarly, Thomas claimed that violent measures such as the dissolution of the monasteries were adopted by Parliament, not by Henry;⁶⁷

⁶² *L&R*, 294-95.

⁶³ *L&R*, 362-67. For the content of the debates, please see chapter 2.

⁶⁴ *L&R*, 396a-398a.

⁶⁵ William Thomas, *The Pilgrim: A Dialogue on The Life and Actions of King Henry the Eighth*, ed. James Anthony Froude (London: Parker, Son, and Bourn, West Strand, 1861), 10.

⁶⁶ Thomas, *The Pilgrim*, 30.

⁶⁷ Thomas, *The Pilgrim*, 11.

moreover, several times the King even graciously ‘pardon[ed] them [the monks of the monasteries] their sins’.⁶⁸ In brief, Thomas attributed the dissolution of monasteries to Parliament and showed Henry’s clemency.⁶⁹ Hall’s chronicle adopted a similar strategy. Though he personally disagreed with the enactment of the Six Articles and even made a speech against it in the 1536 Parliament,⁷⁰ Hall ascribed the death of ‘many an honest and simple persone’ to ‘the rigour of that lawe’.⁷¹ Like Thomas, he did not denounce Henry’s cruelty but said that ‘if the kynges maiestie had not graunted his pardon..., a greate many of them whiche all ready was in prison’ would have been executed.⁷²

Contrary to Thomas and Hall, Herbert did not use Parliament to excuse Henry’s cruel deeds. Herbert agreed with the first movement of the dissolution of the monasteries, but he refused to justify the second wave (the Act of Suppression of Religious Houses under 200 pounds yearly).⁷³ He admitted that he was unable to defend Henry on the second wave of the dissolution, and that he could only console himself with the thought that Henry did use the money acquired from the dissolution to erect ‘divers new Bishopricks, increase the number of Colledges, and the stipend of Readers in the Universities, and did many other pious works’.⁷⁴ Herbert, facing the bloody statute of the Six Articles, openly attacked the enactment and said that it was ‘prejudiciall to that liberty [of conscience]’.⁷⁵ Lamenting the people who suffered from it, Herbert did not take Parliament as Henry’s excuse but only tried to explain

⁶⁸ Thomas, *The Pilgrim*, 45.

⁶⁹ I suppose letting Parliament shoulder the responsibility of the King’s violent deeds, from a particular standpoint, echoed the doctrine of evil counsellors. Both Thomas and Hall pointed to the prevalent idea that the King was the fountain of honour.

⁷⁰ Herman, ‘Hall, Edward (1497–1547)’.

⁷¹ Hall, *Hall’s Chronicle*, 828.

⁷² Ibid.

⁷³ See section 3.4.

⁷⁴ Herbert mentioned Henry’s reparation many times, see *L&R*, 376b, 444, 573. ‘All which being by some openly call’d Rapine and Sacriledge, I will no way excuse.’ *L&R*, 444.

⁷⁵ *L&R*, 447.

why Henry approved the law.⁷⁶

Parliament therefore held high authority in Herbert's thought. He believed that Henry respected Parliament and its Members' opinions and that Parliament's laws were authoritative. Moreover, he did not justify Henry's cruel deeds with Parliament's enactments, and he inserted his five religious common notions in the fictional speech of Members of Parliament. Herbert held that the relationship between King and Parliament was at its best when both cooperated with each other, in the sense that the Crown sought and accepted the advice of Parliament. His account of Henry's relationship with his parliaments formed an implicit suggestion to Charles I, who imprisoned disobedient members of Parliament without cause and dissolved Parliament arbitrarily.

⁷⁶ The explanation was that 'the King was both in that danger of Rebellion at time, and invasion from abroad' See *L&R*, 448.

4.3 Herbert's collections and the authority of Parliament

Herbert's collections now deposited in the National Library of Wales reflect his strong interest in Parliament and its authority. Among 49 items concerning King, Parliament and affairs of state (catalogue reference code E/5/3), 23 manuscripts are related to Parliament. These manuscripts consist of many contemporary parliamentary speeches, records, resolutions, and works.⁷⁷

From this library's collection, I will use five manuscripts which best show that intellectually Herbert was in favour of Parliament's sovereignty over the King, and this will echo the arguments of the previous sections. These manuscripts are 'Of the Antiquity of Parliament' (E5/3/30), 'Arguments in Parliament Concerning the Liberty of the Subject' (E5/3/34), 'Discourse on the High Court of Parliament and the Authority of the Same' (E5/3/42), 'Treatise on the Powers of King and Parliament' (E5/3/46), and 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5/3/49). Most of these manuscripts have hitherto remained unidentified and have rarely been noticed by modern scholars.⁷⁸ 'Of the Antiquity of Parliament', completed between 1604 and 1605,⁷⁹ consists of five short treatises written by Sir John Dodderidge, Francis Tate, William Camden, and Joseph Holland, and Sir Robert Cotton respectively. 'Arguments in Parliament Concerning the Liberty of the Subject' comes from the Parliamentary debate during April 7–May 16 1628

⁷⁷ E5/3/1, 5, 6, 13, 17-18, 22-23, 26-28, 30-31, 34-37, 41-42, 44-46, and 49.

⁷⁸ Only Mario M. Rossi published his transcription of E5/3/49 with his notes. Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, vols III, 492–504. It is worth noting that I will not include Elsyng's *Judicature of Parliament* and *Modus Tenendi Parliamentorum* in the argument of this section, since both works carried no political implication. In other words, Elsyng wrote both works for his own pleasure and use, and he, unlike Sir Robert Cotton, Sir Edward Coke and others in the House of Commons, refused to turn his historical writings into a political account. Foster, *The Painful Labour of Mr. Elsyng*, 36, 45–46. Hence, Elsyng's works could not be used to support the main argument of this section, but could only show that Herbert shared with him a strong interest in Parliament.

⁷⁹ Although the actual date of the Society's session on the tracts of the antiquity of Parliament is unknown, Croft has suggested 1604-1605 as the most likely period. Croft, 'Sir John Doddridge, King James I, and the Antiquity of Parliament', 105.

when the Commons resolved that the liberty of the subject should be protected. ‘Discourse on the High Court of Parliament and the Authority of the Same’ was extracted by an anonymous author mainly from Sir Edward Coke’s *Reports* (1572-1617).⁸⁰ ‘Treatise on the Powers of King and Parliament’ is the first part of *The Sovereigne Power of Parliaments and Kingdomes* (1643) by William Prynne. ‘Treatise on the Royal Prerogative’ was extracted from *The Glorious Name of God, the Lord of Hosts* (1643) by Jeremiah Burroughs. For a more detailed discussion of the origins and contents of each manuscript, please refer back to section 2 of Chapter 1 above.

These five manuscripts, according to their themes and the dates of their composition, can be further divided into three related parts. The first part, consisting of ‘Of the Antiquity of Parliament’ and a portion of ‘Discourse on the High Court of Parliament and the Authority of the Same’, focuses on the antiquity of Parliament. The second part is composed mainly of ‘Arguments in Parliament Concerning the Liberty of the Subject’, a topic that was debated in 1628 when Parliament was preparing the Petition of Right. Surrounding a very important constitutional issue – who, the King or Parliament, held the highest sovereignty of the kingdom –, the third part is made up of ‘Treatise on the Powers of King and Parliament’, and ‘Treatise on the Royal Prerogative’. Both works belonged to the classical works representing the stance of the Long Parliament during the English Civil War. These three parts, as the following paragraphs will show, all point to the idea that Parliament, not the King, held the highest sovereignty, and together they strongly suggest that Herbert agreed with it.

⁸⁰ Edward Coke, *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard, 3 vols. (Indianapolis: Liberty Fund, 2003).

4.3.1 The antiquity of Parliament

The treatises which make up ‘Of the Antiquity of Parliament’ contain three main arguments. The first concerns the composition of Parliament, which is composed of the nobles, the clergy, and the commons (citizens and burgesses), with the King as the head of Parliament. The King is thus a part of Parliament, not outside of it,⁸¹ and Members of Parliament who enact and amend laws are the advisors of the King. The second point concerns the ancient nature of Parliament. The authors all agreed that the history of Parliament could be traced back at least to the Saxons. As Francis Tate said, for instance, ‘the assembly of three estates to consult for the affaires of the Comonwealth is as anntient as the Brittains, and contynued here in the tyme of the Saxons, Danes, and Normans’, and as William Camden maintained, ‘there were such like assemblies as Parliaments now are, before the Romanes arrival here’.⁸² The third contention is about the King’s role in Parliament. Although the King is the highest member, he is neither personally nor actively involved in enacting laws. The King’s duty, according to Francis Jate, is to ‘bee advised whether hee will assent or not’. Dodderidge added that ‘the King never requires aide but for war; or to make his sonne a knight or to marry his daughter’. He also mentioned that the King has the responsibility to be present in the Parliament if he is not sick.⁸³

At first glance, the treatises in ‘Of the Antiquity of Parliament’ are purely historical in nature, and indicate only that Herbert had an interest in Parliament’s history. However, these treatises in ‘Of the antiquity of Parliament’, written between

⁸¹ Francis Jate stated that ‘the persons which meete at the Parliament are 3 states of the Realme, ffirst the King, Second by the Nobles Sp[irit]uall and Temp[or]all; Thirdly the Com[m]ons of the Lands. See ‘Of the Antiquity of Parliament’, fol. 5r.

⁸² ‘Of the Antiquity of Parliament’, fols 8, 10. Also see Doddridge, *The Several Opinions of Sundry Learned Antiquaries*, 65–66, 74; Thomas Hearne, *A Collection of Curious Discourses*, 301, 303. The spelling I used followed Herbert’s collection.

⁸³ ‘Of the Antiquity of Parliament’, fols 3r-3v.

1604 and 1605, were located in a historical context wherein the King and some members of Parliament quarrelled over the nature of Parliament. At that time, James repeatedly asserted that the Crown antedated Parliament, and maintained that the King was the creator of all laws.⁸⁴ Moreover, in a speech in Parliament dated 9 November 1605, James argued that since Parliament's privileges came from the grace of kings, they were revocable. Stating that 'as to the nature of this high Court of Parliament, it is nothing else but the Kings great Councell',⁸⁵ James told members of Parliament that 'you must remember, That you are here assembled by your lawfull King to giue him your best aduises, in the matters proposed by him vnto you'.⁸⁶ In response, a committee of the Commons in the 1604 Parliament, led by Sir Thomas Ridgeway, drew up *The Form of Apology and Satisfaction*, protesting against some policies of King James, including his viewpoint on the nature of Parliament. This document stated that the King had some 'misinformations' concerning 'the rights and liberties of your subjects of England and the privileges of this House'.⁸⁷ It also argued that the privileges of Parliament were not gifts from the monarchy, but owed to members as birthrights and 'due inheritance, no less than our very lands and goods', which 'cannot be withheld from us, denied or impaired'.⁸⁸

Once this historical context is taken into account, it becomes clear that the treatises in 'Of the Antiquity of Parliament' in fact aimed to uphold the authority of Parliament, at least to a position no lower than that of the King. Even if Herbert had

⁸⁴ Before he ascended the throne, James in *The True Law of Free Monarchies* (published in 1598) had claimed that kings existed 'before any Parliaments were holden, or lawes made,' and that 'the kings were the authors and makers of the Lawes, and not the Lawes of the kings'. Charles Howard McIlwain, ed., *The Political Works of James I* (Cambridge: Harvard University Press, 1918), 62. Also see another reprinted version: J. P. Sommerville, ed., *King James VI and I: Political Writings* (Cambridge: Cambridge University Press, 1994), 73. Although the work was written mainly in the Scottish context, James stated that this was the same case in England. McIlwain, *The Political Works of James I*, 62–63.

⁸⁵ Sommerville, *King James VI and I: Political Writings*, 155.

⁸⁶ *Ibid.*, 156.

⁸⁷ J. R. Tanner, ed., *Constitutional Documents of the Reign of James I, A.D. 1603-1625* (Cambridge: Cambridge University Press, 1960), 220.

⁸⁸ *Ibid.*, 221.

been interested only in the history of Parliament, he must have been aware of this political implication. The authors of the excerpted treatises were all members of the Society of Antiquaries founded in the reign of Elizabeth,⁸⁹ and three of them (Dodderidge, Cotton, and Tate) were members of the Commons in the 1610s. This meant that they likely shared with other members of the Commons concerns about James's 'misinformations'. Although Dodderidge, Cotton, and Tate did not join the committee to draw up *The Form of Apology and Satisfaction*, they tried to provide theories of the history of Parliament to counter James' assertion that the crown antedated Parliament. They traced the history of Parliament either to the Saxon age or to the time before the Roman occupation. Soon after human beings experienced the state of nature, Dodderidge maintained, 'the calling of yearly councils, the original no doubt of our later parliaments' came into being because of 'new springing mischiefs standing remediless by the elder customs';⁹⁰ then, from the Roman occupation to the time of William the Conqueror 'Parliament' came into existence through a succession of different forms.⁹¹ Francis Tate held that 'the assembly of three estates to consult for the affairs of the comonwealth is as ancient as the Britains, and continued here in the time of the Saxons, Danes, and Normans'.⁹² Both Dodderidge's and Tate's treatises argue that Parliament was not an invention of the King, but that it preceded monarchy. It is worth noting that King James paid attention to the Society of

⁸⁹ The actual date of the establishment of the Society of Antiquaries seems uncertain. It was believed that the Society was founded in 1572. See Tobias Smollett, ed., *The Critical Review; or, Annals of Literature*, vol. 31 (London: Printed For A. Hamilton, 1771), 31; Linda Van Norden, 'Sir Henry Spelman on the Chronology of the Elizabethan College of Antiquaries', *Huntington Library Quarterly* 13, no. 2 (1950): 136–37. The Society experienced a lively period during 1598–1602, but faded away after 1607. Croft, 'Sir John Doddridge, King James I, and the Antiquity of Parliament', 99, 105.

⁹⁰ John Doddridge, *The Several Opinions of Sundry Learned Antiquaries*, 5; Thomas Hearne, *A Collection of Curious Discourses*, 282.

⁹¹ John Doddridge, *The Several Opinions of Sundry Learned Antiquaries*, 6–18; Thomas Hearne, *A Collection of Curious Discourses*, 282–287.

⁹² John Doddridge, *The Several Opinions of Sundry Learned Antiquaries*, 65–66, 74; Thomas Hearne, *A Collection of Curious Discourses*, 301, 303. Cf: William Camden said that 'there were such like assemblies as parliaments now are, before the Romans arrival here'.

Antiquaries and its related works against his viewpoints. In 1614 when Sir Henry Spelman (1562-1641) tried to revive the Society, he reported that the King showed ‘a little mislike,’⁹³ and in the end he did not successfully revive it.⁹⁴ This report confirms that treatises on the antiquity of Parliament were not just historical articles, but documents that carried political implications.

In addition to the argument that Parliament preceded monarchy, ‘Of the Antiquity of Parliament’ expressed a radical viewpoint that may also have influenced Herbert: the claim that the Commons were indispensable when summoning a Parliament. As Dodderidge put it, ‘if the Comons doe not appeare, there can be noe Parliament though all the great peeres of the Parliament were present with the King; For the proctors, knightes, Cittizens and Burgesses of the Realme doe represent the whole’.⁹⁵ This point was so radical that it could be said to have implied the supremacy of the Commons over the Lords, which was later put into practice on 4 January 1649 when the Commons declared its absolute sovereignty and abolished the Lords.

The presence of these materials in Herbert’s collections shows that he had, at the very least, a keen interest in arguments about the antiquity and authority of Parliament. Further support for this view comes from the two later collections ‘Discourse on the High Court of Parliament and the Authority of the Same’ (E5/3/42) and ‘Treatise on the Powers of King and Parliament’ (E5/3/46). Not only do these manuscripts contain similar arguments to ‘Of the Antiquity of Parliament’, but they also set out the authority of Parliament more clearly by exploiting Parliament’s history. ‘Discourse on

⁹³ See Van Norden, ‘Sir Henry Spelman on the Chronology of the Elizabethan College of Antiquaries’, 155–56.

⁹⁴ Probably facing pressure from the King, Doddridge did not rejoin the Society. Croft, ‘Sir John Doddridge, King James I, and the Antiquity of Parliament’, 105.

⁹⁵ ‘Of the Antiquity of Parliament’, fol. 3v. Also see John Dodderidge, *The Several Opinions of Sundry Learned Antiquaries*, 38; Thomas Hearne, *A Collection of Curious Discourses*, 292.

the High Court of Parliament', after asserting that Parliament held the highest sovereignty in the kingdom and that the King had no arbitrary power, argued that Parliament originated in the Saxon time, and that the form and jurisdiction of Parliament remained unchanged after William the Conqueror became King of England.⁹⁶ Moreover, the discourse maintained that 'in the antient Brittaines & Saxons dayes, King of this Realme, the ArchB[isho]pps and B[isho]pps were called to the P[ar]liament and assemblies of states'.⁹⁷ The passive voice of this sentence implied that the King was only a part of Parliament and that it was not the King who called or created it – contradicting a very important claim of those who held that the King preceded Parliament.

'Treatise on the Powers of King and Parliament' (E5/3/46), the first part of *The Sovereigne Power of Parliaments and Kingdomes* (1643) by William Prynne, exploited Parliament's antiquity to defend its sovereignty. Prynne, who widely cited evidences in English history, shared two arguments with 'Of the Antiquity of Parliament' concerning the composition of Parliament. The first shared point is that the King is obliged to attend Parliament; and if he cannot, Parliament should send twelve people to visit the King who would then grant his power to the Archbishop and Steward of England to start Parliament.⁹⁸ The second point is a radical one: the Commons represents the kingdom, and without the Commons there could be no Parliament, although the King could hold the Parliament without the Lords.⁹⁹ As Prynne said, 'no Parliament can be kept by the King and Peeres, if all the Commons should absent from themselves'.¹⁰⁰ Prynne's interpretation of this point was more

⁹⁶ 'Discourse on the High Court of Parliament and the Authority of the Same', fols 1r-1v.

⁹⁷ Ibid., fol. 27v.

⁹⁸ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 43; 'Treatise on the Powers of King and Parliament', fol. 6v. 'Of the Antiquity of Parliament', fol. 3r; Thomas Hearne, *A Collection of Curious Discourses*, 291–92; Doddridge, *The Several Opinions of Sundry Learned Antiquaries*, 36–37.

⁹⁹ See section 1.2.

¹⁰⁰ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 43–44; 'Treatise on the Powers of

detailed than that of Dodderidge presented thirty years before. He claimed that ‘every Baron in Parliament, doth represent but his owne person, and speaketh in the behalfe of himselfe alone. But in the Knights, Citizens, and Burgesses are represented the Commons of the whole Realme’.¹⁰¹ Furthermore, even though the King now [during the Civil War] was absent from Parliament, Parliament had already lawfully convened and before it formally adjourns the King ‘is still Legally present in Parliament, (called the Kings presence) as he is a King; as he is in all other his Courts of Justice, led the Kings presence’. Prynne’s interpretation suggested that the earlier opinion of Dodderidge intensified during the Civil War. The presence in Herbert’s collection of so many works arguing for the antiquity of Parliament strongly suggests that he agreed that Parliament antedated the crown, and that he was influenced by the political implication of this claim – that Parliament, not the King, held sovereignty over the commonwealth.

4.3.2 The liberty of the people

The second group of Herbert’s manuscripts, consisting mainly of ‘Arguments in Parliament Concerning the Liberty of the Subject’ (E5/3/34), presents the point that the liberty and property of the people should not be encroached upon without the consent of Parliament. The birth of this manuscript came from King Charles’s imprisonment of subjects without showing cause and levying non-parliamentary

King and Parliament’, fol. 7r. It is tempting to think that Prynne copied Dodderidge’s point, but in fact Prynne’s view came from John Vowel [Hooker], *Order and Usage How to Keepe a Parliament* (1571). Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 44. John Hooker maintained that the three estates should assemble together when enacting new law; however, he made an exception by saying that when the Lords ‘absent from’ or ‘obstruct the daily deliberations’, the King together with the Commons could hold a Parliament and enact laws. This exception was based on Hooker’s belief that in early days there was no upper house. Hooker’s statement was not an orthodox view in Elizabethan time. See Vernon F Snow, *Parliament in Elizabethan England: John Hooker’s Order and Usage* (New Haven: Yale University Press, 1977), 64–66, 182.

¹⁰¹ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 43.

taxations, including impositions, the Forced Loan, and tonnage and poundage. Charles also impounded the goods of those who refused to pay, and a well-known case was Darnel's case, or the case of the Five Knights, 1627-1628.¹⁰² In response, in April 1628 the Commons resolved that the liberty of the subject should be protected, and before the House drew up the Petition of Right it sent four people, including Sir Dudley Digges, Edward Littleton, John Selden, and Edward Coke, to hold a meeting with the Lords in order to persuade them to support their resolution.¹⁰³ The speeches of these four Members of the Commons make up the contents of the manuscript.

'Arguments in Parliament Concerning the Liberty of the Subject' claimed that the liberty and property of the people should not be taken away arbitrarily. After addressing the antiquity of common law, Sir Dudley Digges maintained that 'it is an undoubted and fundamental pointe of this soe antient Comon Lawes of England that the Subject hath a true property in his goods and possessions'.¹⁰⁴ Edward Littleton, after the introduction of Digges, cited British history, especially the signing of Magna Carta, to prove that individual liberty was beyond doubt and then to argue 'that no man ought to be ymprisoned by speciall Comande without Indictment or other due process to bee made by the lawe'.¹⁰⁵ Selden, a life-long friend of Herbert, shared the same view with Digges and Littleton and stressed that the 'Writ of *Habeas Corpus*, or *Corpus cum causa*,¹⁰⁶ the mechanism to prevent the abuse of law by king's council and protect individual liberty, should not be denied.

'Discourse on the High Court of Parliament and the Authority of the Same' (E5/3/42) echoed the main point of 'Arguments in Parliament Concerning the Liberty

¹⁰² Cust, *Charles I: A Political Life*, 117.

¹⁰³ Johnson et al., *Commons Debates, 1628*, 2:332; Rushworth, *Historical Collections Of Private Passages of State*, 1:525–27; *The Parliamentary or Constitutional History of England*, 7:407–9.

¹⁰⁴ 'Arguments in Parliament Concerning the Liberty of the Subject' (National Library of Wales, n.d.), 4; *A Conference Desired by the Lords and Had by a Committee of Both Houses*, 3.

¹⁰⁵ 'Arguments in Parliament Concerning the Liberty of the Subject', fol. 9; *A Conference Desired by the Lords and Had by a Committee of Both Houses*, 17.

¹⁰⁶ *A Conference Desired by the Lords and Had by a Committee of Both Houses*, 32.

of the Subject'. Stressing that Parliament was the highest court, it maintained that it was Parliament's duty to protect people from the encroachment of unlawful policies. It stated that the purpose of Parliament was to keep subjects from any offence without due process of law, and to ensure that people could 'live safely in quiet' and 'receive Justice by certain laws and holy judgm[en]ts' from Parliament.¹⁰⁷ Moreover, 'Discourse on the High Court of Parliament', though saying that the King had his prerogatives such as summoning Parliament and Convocation and remitting the penalty of a subject by proclamations,¹⁰⁸ asserted that the King's prerogatives were not unlimited and that actions such as confiscating and forfeiting the property and land of a subject could 'only [be done] by authority of this high Courte of Parliament'.¹⁰⁹ Similarly, the King could not alter the laws by his proclamation, and 'the penaltie of not obeying his proclamacon may not bee vppon the paine of Forfeiture of his goods, his lande or his life without Parliament's consent'.¹¹⁰

'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5/3/49), which as we recalled was extracted from Burroughs' *The Glorious Name of God, the Lord of Hosts*, also echoed the main point of 'Arguments in Parliament Concerning the Liberty of the Subject' by saying that the King could not act arbitrarily but should protect the people's well-being. Burroughs stated that 'the Law of God, and Nature teacheth that being now the father of the K[ing]dom, hee is not to waste his childrens Inheritance, indeed the peoples right, but to preserve and uphold it',¹¹¹ since 'the people are more antient then the King; and for the people

¹⁰⁷ 'Discourse on the High Court of Parliament and the Authority of the Same', fols 2r-2v.

¹⁰⁸ Ibid., fol. 32r.

¹⁰⁹ Ibid., fol. 30r.

¹¹⁰ Ibid., fol. 32r.

¹¹¹ 'A Treatise on Obedience to Magistrates', fol. 5v. CF: Rossi's transcription: 'The law of God, & Nature teacheth that being now the father of the Kdome, hee is not to waste his childrens Inheritance, that is the popular right, but to preserve & enforce it'. Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury*, vol. III, 495.

were kings ordained'.¹¹²

The point in the above three manuscripts corresponded with Herbert's personal long-term concern for the liberty of the subject shown in his religious and historical works. A shared intention of *De Veritate*, *De Religione Laici*, and *A Dialogue Between a Tutor and His Pupil* was to protect laymen from religious oppression under the pretext of the clergy's authority. In the previous chapter, we saw that, in *The Life and Raigne of King Henry the Eighth*, Herbert expressed his open objection to the Six Articles for endangering the individual's liberty of conscience.¹¹³ Now his collection E5/3/34 and E5/3/42 aimed to oppose the King's oppression of personal property and liberty.

4.3.3 The sovereignty of the kingdom

The following paragraphs focus on the last discussion group concerning the very core of the conflict between the King and Parliament during the Civil War: who, the King or Parliament, has the highest sovereignty in the kingdom? I will discuss 'Treatise on the Powers of King and Parliament' (E5/3/46) first, since it aimed to answer this question. Then the discussion will shift to 'Treatise on the Royal Prerogative' (E5/3/49). Although the latter manuscript concentrated on a related issue (whether subjects or Parliament have the right to resist a tyrant),¹¹⁴ it touched the core question as well. Both manuscripts were transcribed by Herbert,¹¹⁵ and, as the following paragraphs will show, they strongly suggest that Herbert in principle agreed that Parliament, not the King, holds the highest sovereignty.

¹¹² 'A Treatise on Obedience to Magistrates', fol. 5v.

¹¹³ For more detail, see section 2.3 above.

¹¹⁴ For Herbert's view on the issue whether the people or Parliament could resist a tyrant, see Chapter 5 below.

¹¹⁵ As argued in the section 1.2 above.

‘Treatise on the Powers of King and Parliament’ (E5/3/46), which was the first part of Prynne’s *The Sovereigne Power of Parliaments and Kingdomes*, argued that Parliament without the King’s personal consent, not the King without Parliament’s consent, held sovereignty.¹¹⁶ Prynne’s main theme was that Parliament was ‘the Highest Sovereigne power of all others, and above the King himselfe’.¹¹⁷ Under this theme came six main points: (1) Parliament, ‘as appears by infinite precedents in this [Long Parliament] and all former Parliaments’, has lawful power to examine the King’s ‘Patents, Charters, Commissions, Proclamations, Grants, Warrants, Writs, and Commitments’.¹¹⁸ Further, Parliament can determine the scope of the King’s prerogative, while the King had no such power.¹¹⁹ (2) Parliament’s power is the highest and ‘it is above the Law itselfe’.¹²⁰ Moreover, it has power ‘upon just grounds to alter the very common Law of England’.¹²¹ (3) Parliament ‘is the highest Court’ where ‘the last appeale is to be made’.¹²² Thus Parliament is the highest sovereign and is entitled to investigate every matter in the kingdom. (4) The King’s power is not the highest authority since ‘Salus populi’ is the supreme law and the ‘end for which all royall power was instituted by God and Man’. Furthermore, ‘Kings were first constituted, and still continued for the protection, welfare, benefit, [and] service of their kingdomes’; thus the King’s power is beneath the law, the kingdom, and

¹¹⁶ Smith, *The Stuart Parliaments, 1603-1689*, 129–31. Regarding the various theory on the King’s and Parliament’s power, see Goldsworthy, *The Sovereignty of Parliament History and Philosophy*, 78–141.

¹¹⁷ For the writing structure of the first part of *The Sovereigne Power of Parliaments and Kingdomes*, see footnote 93 of Chapter 1 above.

¹¹⁸ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 34–38.

¹¹⁹ *Ibid.*, 35.

¹²⁰ CF: ‘The chiefe power of enacting and making Lawes is onely in the people, Commons, and Peeres, not the King’. ‘Treatise on the Powers of King and Parliament’, fol. 8v; Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 48.

¹²¹ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 46; ‘Treatise on the Powers of King and Parliament’, fol. 7v.

¹²² CF: ‘Now this is an infallible Maxime, both in the Common, Civill, and Canon Law, that The Courts or person to whom the last appeale is to be made, is the Supreamest power’. Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 92–93; ‘Treatise on the Powers of King and Parliament’, fol. 3v.

Parliament which represents it.¹²³ The King is obliged to accept the laws passed by Parliament since he has given his pledge by his coronation oath.¹²⁴ (5) While the King, as an individual, is superior to any subject, he is inferior to the associated body of the people. The reason is that ‘the whole, or greatest part in all politique or naturall Bodies is of greater excellency, power, and jurisdiction, than any one particular member’.¹²⁵ (6) Parliament has ‘supreme power over the Crowne of England’. It can dispose of the king’s ‘mis-government’, depose him, ‘transfere it from the right heire’, or ‘set up others in the Throne’.¹²⁶ To sum up, these six points must have left a strong impression on Herbert by continuously stressing that in principle Parliament was above the King.

The way in which ‘Treatise on the Powers of King and Parliament’ was transcribed indicates that Herbert also noticed that Prynne’s work vested sovereignty in the Long Parliament and not in the King, since it transcribed two justifications of the Long Parliament’s resolutions against the King. One was given after Prynne presented the principle that the whole was greater than any particular part (the fifth point from the above), a very common legal principle that the King is ‘major singulis minor universis’.¹²⁷ Prynne then argued that the fact ‘that most of the Lords are

¹²³ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 45–46; ‘Treatise on the Powers of King and Parliament’, fols 7r–7v.

¹²⁴ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 56, 75, and 78; ‘Treatise on the Powers of King and Parliament’, fol. 2v. Prynne’s published edition skipped page number 57–74 and 76–77. It is just a small printing error and it does not impair the content.

¹²⁵ ‘The King though he be the chiefe and principall, yet he is onely one member of the Parliament and Kingdome, the least (because the one person) though the highest branch.’ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 41; ‘Treatise on the Powers of King and Parliament’, fol. 5v. The same point is repeated in Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 104; ‘Treatise on the Powers of King and Parliament’, fol. 4v. This point was commonly raised during the Civil War.

¹²⁶ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 50, 78, 86; ‘Treatise on the Powers of King and Parliament’, fols 2v–3r.

¹²⁷ Henry Parker adopted the same argument in his *Observations upon some of his Majesty's late answers and expresses*. He said that ‘we see that [regal] power is but secondary and derivative in Princes, the fountaine and efficient cause is the people, and from hence the inference is just, the King, though he be singulis Major, yet he is universis minor’. Henry Parker, *Observations upon Some of His Majesties Late Answers and Expresses* (London: [publisher not identified], 1642), 2.

absent as well as the King' could not make the Long Parliament unlawful since the whole Parliament was superior to any member of the house. 'If these absent Members be the greater number,' he criticized, 'why doe they not come and over-vote the rest in the House in a peaceable, legall, usuall Parliamentary way, rather than challenge them into the field in a military, illegal, unusuall bloody manner, unheard of in former ages?'.¹²⁸ And he condemned the King's absence as a deed 'against all precedents of his Royall predecessors, except King Richard', and thus 'hurtfull and dangerous to the whole commonalty of the Parliament'.¹²⁹ The other justification transcribed was shown after Prynne claimed that Parliament had arbitrary power to dispose of the crown. He then described the present situation as an imminent danger to the Long Parliament and the King's person since the 'ill Counsellors' brought 'the most destructive policy' to the King and 'oppressed their Subjects' extremely.¹³⁰ The Long Parliament, therefore, was forced to 'use the extremity of their Sovereigne power' though they 'never challenged nor exercised such jurisdiction'.¹³¹ From the above-mentioned illustrations, we can see that Herbert was also conscious of the connection between Prynne's principles and his justifications to the Long Parliament's resolutions.

However, it seemed that Herbert was interested only in the principle, not in the present controversy between King Charles and the Long Parliament, since the space of his transcription of Prynne's justifications of the Long Parliament's resolutions was quite limited and he did not transcribe a paragraph with Prynne's profession of his loyalty to the King. Before the end of the first part of *The Sovereigne Power of*

¹²⁸ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 42; 'Treatise on the Powers of King and Parliament', fol. 6r.

¹²⁹ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 42–43; 'Treatise on the Powers of King and Parliament', fols 6r–6v.

¹³⁰ Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 86; 'Treatise on the Powers of King and Parliament', fol. 2v.

¹³¹ 'Treatise on the Powers of King and Parliament', fol. 2v.

Parliaments and Kingdomes, Prynne said that his arguments were ‘not out of any the least intention to derogate from his Majesties just Supremacie and Prerogatives royall, which I have oft solemnly sworn to maintain to the utmost of my power...I love and honour both King and Parliament alike, and in the controversies now between them concerning their jurisdictions, stand as a man indifferent to do right to both, without prejudice to either’.¹³² Herbert skipped this profession perhaps because he considered this statement insincere, but most likely because he was only interested in the arguments Prynne presented. Whatever the case, the profession seems not to have carried much weight for him.

‘Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power’ (E5/3/49), which aimed to show that Parliament could resist a tyrant, used the argument that Parliament held the highest sovereignty in the kingdom. Burroughs said that the highest court in this kingdom was Parliament where the last appeal was to be made.¹³³ Even though ‘the King saies that which is done [by the Long Parliament] is against Law’, ‘the King’s personall dissent’ was still inferior to the judgement of the highest court.¹³⁴ Moreover, Burroughs maintained that ‘the determination of what is Law’ could be done ‘by both the houses, in the absence of, or without the knowledge of the King’. In brief, Parliament held the highest sovereignty since it had the last say on any issue in the kingdom.

It is very interesting that Herbert transcribed a point that the Long Parliament, since Parliament held the highest sovereignty, had the power to punish ‘Delinquents’

¹³² Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 103. As mentioned above, the manuscript was transcribed till page 104. Thus page 103 is located in the range of the survived manuscript.

¹³³ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 30–31; ‘Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power’, fol. 1v. CF: ‘The Courts or person to whom the last appeale is to be made, is the Supreamest power’ in Prynne, *The Sovereigne Power of Parliaments and Kingdomes*, 93; ‘Treatise on the Powers of King and Parliament’, fol. 3v.

¹³⁴ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 29; ‘Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power’, fol. 1v.

without the consent of Charles I.¹³⁵ In the eye of the Long Parliament Herbert was just such a delinquent due to his absence from the Lords when the Civil War broke out. The Long Parliament even confiscated and sold his property in London.¹³⁶ This additional information suggests that Herbert's support of Parliamentary Sovereignty was stronger than expected; it did not waver even after he was denounced by the Long Parliament.

The manuscripts discussed in this section reveal that intellectually Herbert was in favour of Parliament's sovereignty over the King, and that he believed Parliament could save the people from the moral dilemmas caused by the oppression of the unlawful commands of the King. The first group of manuscripts showed Herbert's interest in the history and authority of Parliament. The second group of manuscripts indicated that Herbert shared the same concern with the Parliamentarians on the property and liberty of the subject, which should not be oppressed by the King without the consent of Parliament. The third group of manuscripts argued that Parliament held sovereignty, a fundamental point of Parliamentary theory. At the same time, Herbert's collections suggest that he was not interested in royalist theories on the power of the King, since no such manuscript survives in the National Library of Wales. Moreover, as I have argued in Chapter 3, Herbert's thoughts were not compatible with the divine right theory of kings. These pieces of evidence all support the same argument that Herbert believed in Parliament's sovereignty and in Parliament as the most important mechanism to protect the well-being of the people. The next chapter will discuss the resistance to tyrants, an issue debated by royalists and parliamentarians during the early 1640s, and will echo the main argument of this section by suggesting that in Herbert's view Parliament could lead the people to resist

¹³⁵ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 32; 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 2r.

¹³⁶ AB, 150.

in order to protect the peace of their consciences.

Chapter 5: Conscience and Resistance in the Early English Civil War: ‘Whether Conscience Grants that the People could Resist a Tyrant?’

Although the Personal Rule of Charles ended in 1640, his relationship with Parliament continued to deteriorate. The Short Parliament of which Herbert was a member neither satisfied the pecuniary need of the King nor relieved him of the grievances of Members of Parliament.¹ In September 1640 the Long Parliament convened, and although it addressed many parliamentary grievances – rescinding non-parliamentary taxes, for example, and dissolving the Star Chamber and the Court of High Commission –² the relationship between King and Parliament remained tense. The relationship deteriorated after Charles again tried to arrest six Members of Parliament on 4 January 1642 by his royal warrant, an action that was regarded as a serious breach of Parliament’s privileges.³

In the summer of 1642, the Long Parliament sought a justification for taking up arms against the King. Royalists held that by no means could subjects resist their sovereign, not only because their consciences were bound by their oaths of allegiance to the King,⁴ but because conscience would also urge them to help their sovereign suppress the rebellion. In response, Parliament’s supporters argued that when the King became a tyrant, subjects were released from their oaths and conscience would allow them, or even require them, to resist. Under this circumstance, resistance was not

¹ Charles was in need of money since he was launching a war against the Scots, but members of Parliament concentrated on their grievances about the unlawful imprisonments of Members of Parliament in 1629, the long intermissions of Parliament, and the financial expenditure and religious innovations of the Laudian reform programme in the Personal Rule. David L Smith, *The Stuart Parliaments, 1603-1689* (London; New York; New York: Arnold; Co-published in the U.S.A. by Oxford University Press, 1999), 120-22.

² Samuel Gardiner, *The Constitutional Documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1906), 145-155, 179-192.

³ David L Smith, *The Stuart Parliaments, 1603-1689*, 125-29.

⁴ Joyce Lee Malcolm, *The Struggle for Sovereignty: Seventeenth-Century English Political Tracts* (Indianapolis, Ind.: Liberty Fund, 2008), xxix.

rebellion.

Herbert, in addition to having an interest in Parliament (see Chapter 4 above), was concerned with the English Civil War, especially the question of whether Parliament and the people could lawfully take up arms against the King. A record in May 1642 shows that Herbert had delivered a statement after Parliament resolved that if the King made war upon Parliament, it was a 'Breach of the Trust reposed in him by his People, contrary to his Oath, and tending to the Dissolution of this Government', and that anyone who assisted the King was a traitor to the kingdom.⁵ Herbert stated that he would agree with Parliament's resolution if the King launched the war 'without cause'.⁶ Although Herbert later withdrew his statement because it irritated Parliament – the reason remains unclear, but it is likely Parliament took offence at the reservations expressed by Herbert –⁷ it reveals that he participated publicly in the discussion of the issue. Moreover, although he retired to Montgomery Castle after the Civil War broke out, he still had a concern for whether Parliament or the people could lawfully resist a tyrant, as I will show in this chapter.

It is worth noting that although the questions of 'whether Parliament could lawfully resist a tyrant' and 'whether the people could lawfully resist a tyrant' might seem to be separate issues, during the English Civil War they were not discussed separately and were regarded as very closely related. As we will see, since the Royalists insisted that under no circumstance could princes be resisted, they usually did not discuss the above two issues separately, but sought to deny both at the same time. Neither were these issues separate for the Parliamentarians. They argued that

⁵ *The Parliamentary Or Constitutional History of England*, vol. 11 (London: William Sandby, 1762), 2. For this record, I am indebted to the anonymous editor of the Life of Herbert, 1826 version. Edward Herbert, *The Life of Edward Lord Herbert of Cherbury. Written by Himself*, 4th ed. (London: Saunders and Otley, 1826), 326.

⁶ *The Parliamentary Or Constitutional History of England*, 11:3.

⁷ Herbert was 'commanded to withdraw,' and the next day he delivered the petition, 'declaring his Sorrow for letting fall certain Words in the Midst of a Period, which had given Offence'. Parliament was satisfied by it. *The Parliamentary Or Constitutional History of England*, 11:3.

tyrants could be lawfully resisted by the authority of Parliament, and not by private subjects – that is, Parliament should lead the people in resisting the King’s tyranny.⁸ In practice, though the Parliamentarians sometimes presented their questions in both ways – as Prynne put it, the question was whether ‘Parliament or Subjects (especially when authorized by an Ordinance of both Houses)’ could lawfully resist a tyrant –⁹ they did not see them as separate issues to be argued, but two presentations of one issue with slightly different emphases. When asking whether *Parliament* could lawfully resist a tyrant, their discussions focused more on constitutional issues, showing that Parliament had the authority to do so. When asking whether the *people* could lawfully resist, their discussions concentrated more on matters of conscience and on appealing to individuals to take up arms and join the Long Parliament.

Whether a tyrant could be resisted was particularly a problem of conscience. It was a moral dilemma, especially for the supporters of the Long Parliament, since on the one hand they had taken the oath of allegiance to King Charles as the supreme governor, but on the other hand they viewed Charles’s unlawful policies as tyranny. The dilemma was also a conflict between public duty and private conscience, as mentioned in Chapter 2 above. The people, as subjects, were required to obey the commands of King Charles, but might have scruples when obeying his unlawful commands. Some English casuists – notably Robert Sanderson, Jeremy Taylor, and Richard Baxter – discussed this topic explicitly and provided their guidance and answers according to their theories of conscience. Their discussions indicate that the issue was an important casuistical question at that time.

Some of Herbert’s private collections deposited in the National Library of Wales focus on the issue: the latter part of ‘A Treatise on Obedience to Magistrates’

⁸ See section 5.2.

⁹ Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd pt, 63.

(E5-3-44), ‘Treatise on the Powers of King and Parliament’ (E5-3-46), and ‘Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power’ (E5-3-49). Herbert’s concern for this issue, like his interest in Parliament discussed in chapter 4, has never been carefully examined. This chapter will provide his viewpoint on this early English Civil War controversy. Herbert’s concern for this topic echoes his emphasis on individual conscience as presented in Chapter 2 above. In other words, because he valued individual conscience, Herbert quite reasonably paid close attention to this issue, which usually gave rise to serious moral dilemmas among subjects.

This chapter argues that it is very likely that Herbert agreed with the Parliamentary claims that conscience supports resistance against tyrants, and that the Long Parliament’s resistance to Charles therefore was not a rebellion. The first section, based on the theory of conscience of the English casuists (presented in Chapter 2 above), investigates their answers to this dilemma. Though they belonged to different camps in the English Civil War,¹⁰ Sanderson, Taylor, and Baxter all maintained that subjects could passively disobey the King’s unlawful commands, but by no means could they resist by force. Mainly by citing Scripture and the theory of the divine right of kings, they warned the people that they should not touch the deputy of God and the Lord’s anointed. The second section analyzes both Royalists and Parliamentarians’ arguments and the viewpoints contained in Herbert’s collections. Both sides agreed with the English casuists that conscience held high authority. Moreover, the moral principles appealed to by both sides were derived from three sources that the English casuists had proposed in their theory of conscience: nature, Scripture, and human laws. On the issue of whether the people could resist a tyrant, as

¹⁰ Sanderson and Taylor chose to join the King, while Baxter provided service for the New Model Army.

well, both sides agreed on many points, including that the people could disobey the unlawful commands of the King, and that the King's abuse of the law could not justify subjects' in taking up arms against him. However, both sides reached different conclusions because they had varied interpretations on the laws of kingdom and Scripture. The King's supporters, following the arguments of the English casuists, insisted that under no circumstance could the people resist their sovereign since the King was God's anointed and was above the laws of the kingdom. In response, Parliament's supporters reinterpreted verses of Scripture and human laws to justify their grounds. They justified the Long Parliament's taking up arms by arguing that God's anointment was not confined to kings only but could be bestowed on all kinds of people, that the King was inferior to both God and the laws of the kingdom, and that Parliament was the highest court in the realm – hence, Parliament had the power to dispose of the crown. Herbert's manuscripts reflected the Parliamentary interpretations of Scripture and human laws, and they suggested that a tyrant could be lawfully resisted.

5.1 The theories of the English casuists

Based on their theories of conscience, the English casuists Robert Sanderson, Jeremy Taylor, and Richard Baxter discussed the obedience of subjects and the question of whether the people of the kingdom could lawfully resist a tyrant. By citing moral principles derived from nature, Scripture, and human laws, they concluded that subjects could disobey the unlawful commands of a tyrant, but under no circumstance could they take up arms against their prince.

Personally involved with the war, Sanderson and Taylor discoursed on the topic in their casuistical works. Sanderson, a rector of Boothby Pagnell in Lincolnshire for four decades, was reputedly skilled at ‘reconciling differences and preventing Law-suits’ and at resolving the clashes between landlords and their tenants.¹¹ Since Sanderson’s casuistical skill was well-known, on the recommendation of Archbishop Laud he became Charles I’s chaplain in November 1631. According to Izaak Walton, Charles I once said ‘I carry my ears to hear other Preachers; but I carry my Conscience to hear Mr. Sanderson, and to act accordingly’.¹² During the civil war Sanderson stood firmly with the King even after being seized by the Parliamentary army in 1644 in Lincoln. In 1646 Sanderson received the Regius professorship of divinity at Oxford and delivered seven lectures on the obligation of oaths.¹³ In the next year, he delivered ten lectures on conscience and human law before he was deprived of the position by the Long Parliament in 1648 for refusing to take the oath of Solemn League and Covenant and the Negative Oath.

¹¹ Izaak Walton, ‘The Life of Dr. Sanderson’, in *XXXV Sermons*, 7th ed. (London: Printed by ThoHodgkin, 1681), 13. For his early career please see Walton, 4–10; Anthony Wood, *Athenae Oxonienses*, vol. 2 (London: Printed for Tho. Bennet, 1692), 214.

¹² Walton, ‘The Life of Dr. Sanderson’, 15.

¹³ The seven lectures were later published in 1655 as *De Juramento*. King Charles I had translated them when he was imprisoned by the Long Parliament. Walton, 21; Wood, *Athenae Oxonienses*, 2:214.

Obtaining a promising academic achievement in his early career, Jeremy Taylor attracted the attention of Laud and became his chaplain in about 1638, later becoming Charles's chaplain-in-ordinary in 1642.¹⁴ He sided with the King during the Civil War and preached frequently at the court of Oxford.¹⁵ In early 1645, he became a prisoner for two months after the defeat of a Royalist force in Wales; after his release he took shelter in the parish of Llanfihangel Aberbythych, Carmarthenshire. Completed during the 1650s and published in 1660, his *Ductor Dubitantium: or, The Rule of Conscience* was dedicated to Charles II.

In addition to Sanderson and Taylor, Richard Baxter witnessed the civil war and served in the New Model Army. But he was not very devoted to the war, partly because his bad health held him down at this harsh time, and partly because he disagreed with the radical views of the New Model Army. Although Baxter aligned himself with the Long Parliament, he agreed with Sanderson and Taylor on many points regarding the question of whether the people could resist a tyrant.

In casuistical theory, the topic of the obedience of subjects and the question of resistance to tyrants belong to the category of human laws. Human laws include the laws prescribed by nations for their citizens, by parents for their children, by kings for their subjects, and by masters for their servants.¹⁶ Human laws also encompass the oaths, vows, contracts, and promises made by men.¹⁷ At first glance, there seems to be much room for disobedience to superiors and for resistance to tyrants since in theory God's law alone binds man's conscience directly while human laws only do so

¹⁴ Wood, *Athenae Oxonienses*, 2:282. Entering Gonville and Caius College, Cambridge, in 1626, Taylor obtained his BA in 1631 and MA in 1634. He took holy orders in 1633 while still below the canonical age. Moreover, he was elected as a fellow at the Perse School, Cambridge.

¹⁵ Ibid.

¹⁶ Robert Sanderson, *Several Cases of Conscience: Discussed in Ten Lectures*, trans. Robert Codrington (London: Printed by ThoLeach, 1660), 149-50.

¹⁷ Sanderson, *Several Cases of Conscience*, 149-50.

indirectly.¹⁸ Arguing that human law does not always bind the conscience of man, Taylor said that man must obey the commands of the divine law but could ‘seek to be freed from the band of any human law’.¹⁹ However, the English casuists, Protestants and Anglicans included, maintained that in most cases subjects are obliged to obey the commands of kings even if they are tyrants.

According to the English casuists, in principle subjects must obey the commands of kings since human laws were the extension of God’s laws. Sanderson wrote that human laws oblige the consciences of subjects ‘by the Consequent and by Vertue of the general Divine Commandement’.²⁰ Sharing the same view with Sanderson, Taylor stated that ‘the law of man binds the conscience mediately, and by the interposition of the Divine authority: so that we must obey man for God’s sake, and God for his own’.²¹ Moreover, every subject is bound to obey ‘the just laws of his lawful superior, not only under fear of punishment from man, but under pain of the Divine displeasure’.²² In brief, since ‘all lawful power whatsoever it be, not only publick ... but also all private power is constituted of God’,²³ subjects must obey the commands of kings.

In one circumstance only could subjects disobey the commands of kings: when the command itself – not the intention of the commander, which should not be taken into consideration by subjects – is contrary to God’s law. In this case, the command is unjust since it contradicts the primary moral principles either shown in Scriptures or implanted in the mind of every human being. The unjust command or law does not bind the conscience of man, and anyone who obeys it commits a sin. This means that

¹⁸ ‘I say ...that such [human] Laws doe not oblige by themselves, and directly; I prove first because, that God alone is that Law-maker, who hath a most peculiar and direct Command over the Conscience of men’. Sanderson, *Several Cases of Conscience*, 176.

¹⁹ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:262.

²⁰ Sanderson, *Several Cases of Conscience*, 177.

²¹ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:261.

²² *Ibid.*, 13:235.

²³ Sanderson, *Several Cases of Conscience*, 152.

it is not merely the right but the duty of the people to disobey those commands contrary to God's law.²⁴ After presenting the abovementioned point, Sanderson stated that divine laws supercede human laws, and gave some examples of unjust commands such as 'homicide, Perjury,' and prohibiting 'the worship of the true God'.²⁵ Taylor, regarding this point as a rule of conscience,²⁶ added that when a law causes 'an imminent Danger of Death, or an intolerable or very grievous Evil in the Obedience', it is an unjust law and thus does not bind the consciences of men.²⁷

A king's abuse of a lawful law does not justify a subject's disobedience, however, according to the casuists. Even if a king issues his command 'by the desire of filthy Lucre, or meer Lust of exercising his Tyranny, or by some other depraved affection of his mind', subjects should still obey since they could only consider whether the command itself was just or not. Subjects were not entitled to judge the intentions of kings; this point, which I will explain below, is related to the casuists' theory of the divine right of kings. If a command is issued from a lawful law, people are bound to obey.²⁸ In other words, subjects could not disobey a law by claiming that the king had a bad intention; intention is another issue, and an issue particularly for the King himself – his conscience would finally be judged by God alone. Therefore, subjects must obey and endure the sufferings caused, for example, by a command to pay 'a greater subsidy than the occasion doth require'.²⁹

In all other cases the English casuists maintained that subjects must obey human laws and the commands of kings. When a human law is enacted in accordance with divine law – for instance, the law that evil and theft should be avoided – the

²⁴ Sanderson, *Several Cases of Conscience*, 155. 'Human Laws if unjust do not oblige unto obedience'.

²⁵ Ibid., 158.

²⁶ 'The Laws of our Superior that are not just and good, do not oblige the Conscience'. Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:274–76.

²⁷ Ibid., 13: 266. Sanderson had a similar opinion, see Sanderson, *Several Cases of Conscience*, 156.

²⁸ Ibid., 155-57.

²⁹ Ibid., 157.

conscience of each subject is bound to obey. When a human law regulates indifferent things that are not specifically restricted by God's law, the consciences of men are bound as well. Presenting such an opinion, Sanderson said that 'human laws concerning things not unlawful, do by themselves, and directly, in the general oblige the Conscience' because 'God in the Holy Scripture doth command us to be subject unto those who are over us'.³⁰ According to Taylor, 'in things indifferent the command of the superior must need be accounted the will of God',³¹ and thus to disobey such a command is a sin.³² But it should be noted here that the English casuists held different opinions on some ceremonial matters such as kneeling to receive the sacrament or wearing a surplice.³³

The English casuists used Scripture and the theory of the divine right of kings to argue that in nearly all cases subjects should obey human laws and the commands of kings. Meanwhile, Sanderson used the theory of divine right to refute the Long Parliament's claims that the governing power of kings comes from the people, that the people have the right to resist a tyrant, and that Parliament holds the highest sovereignty and jurisdiction.³⁴ He argued instead that kings are inferior only to God but superior to all subjects and that they hold the sovereign power on the earth.³⁵ We can see some very common statements in English casuistical works such as that the

³⁰ Sanderson, *Several Cases of Conscience*, 175-76.

³¹ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 12:23.

³² 'When an action, in itself indifferent, is by the law expounded to signify a sin, though in itself it do not, nor in the heart of him that does it, the disobedience to that law is an act of that sin, or at least of a scandal relative to it.' Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:244.

³³ A spectrum could be made according to their religious stances. Anglican clergymen Sanderson and Taylor maintained that ceremonial matters are by themselves indifferent things while Protestant ministers Perkins and Baxter accepted them with reservation. Ames was well-known for denouncing them as popish things. See Slights, *The Casuistical Tradition in Shakespeare, Donne, Herbert, and Milton*, 28-29. Baxter provided a detailed list of things indifferent. See Baxter, *A Christian Directory*, 683-84.

³⁴ Sanderson, *Several Cases of Conscience*, 241-42, 253-54. CF: 'The powers ordained, are ordained by God, not the people'. Sanderson wrote that even in an elective kingdom 'the whole power of the elected King' depends not on the people but on God. Ibid., 260.

³⁵ 'Rulers therefore are God's officers, placed under him in his kingdom, as he is the universal, absolute sovereign of the world.' Baxter, *A Christian Directory*, part IV, 9.

King is delegated by God to govern subjects, that the King is God's deputy, and that the King is like a god.³⁶ These sayings were used to justify the obedience of subjects to the King. At the same time, in order to strengthen their point, the English casuists often cited Romans 13:5 and 1 Peter 2:13 to require subjects to obey the commands of kings for conscience's sake.³⁷ Based on the rule given by the Bible, resisting – as opposed to merely disobeying – became a sin, as Taylor argued that 'it is a great crime by rebelling against or slighting the command of our rulers...and there can be no greater contempt done to them, than by undervaluing their judgement to prefer our own'.³⁸

Subjects should obey the lawful commands of a tyrant because 'the authority of a sinful ruler is of God, and must accordingly be obeyed'.³⁹ Pointing out that subjects 'do live safe from slaughter, and rapine' because of the protection of kings, Sanderson wrote that subjects should submit themselves to kings and even to tyrants 'for there cannot be so great a Tyranny which doth not retain some shew of a just Government, and doth not, at least a little, conduce to maintain the society of men'.⁴⁰ After asking what to do 'if they [kings] be evil and unjust, cruel and unreasonable enemies of their people, and enemies of mankind', Taylor answered: 'let him be what he will, if he be the supreme, he is superior to me, and I have nothing to do, but something to suffer; let God take care, if he please, I shall be quickly remedied'.⁴¹ Moreover, the English casuists strengthened their argument by citing Ecclesiastes 10:20: 'curse not the king;

³⁶ Examples of this kind could very easily be multiplied. See Sanderson, *Several Cases of Conscience*, 175-76, 253-54, 349; Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:453; Baxter, *A Christian Directory*, part IV, 14-15.

³⁷ Romans 13:5 reads 'Wherefore it is necessary that ye be subject, not only for wrath, but also for conscience sake...so be obedient to your masters, or temporal lords' and 1 Peter 2:13 states 'submit yourselves to every ordinance of man for the Lord's sake'. The quoted version comes from Taylor's work. Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:236; Sanderson, *Several Cases of Conscience*, 174-75; Baxter, *A Christian Directory*, part IV, 14.

³⁸ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 12:23.

³⁹ Baxter, *A Christian Directory*, part IV, 15.

⁴⁰ Sanderson, *Several Cases of Conscience*, 171.

⁴¹ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:465, 467.

no, not in thy thought'.⁴² Taylor added that 'no man needs this last precept but he that thinks the king is an evil man, or hath done wrong: but suppose he have, or that he is supposed to have, yet curse him not'.⁴³ This presents the casuists' idea that since kings are inferior to God only, private persons are not allowed to criticize them and subjects should obey the commands of tyrants.

According to the English casuists, subjects could disobey the unjust commands of tyrants but by no means could they resist by force.⁴⁴ Deducing their arguments firstly from the theory of the divine right of kings, the English casuists maintained that only God could punish an evil king – but Taylor added that subjects should not pray to God for this.⁴⁵ Moreover, the casuists, quoting the Christian law 'not to oppose evil to evil', asserted that subjects should not seek revenge on a tyrant by force.⁴⁶ Since the King is the deputy of God, resisting him – whether he is good or not – is equal to resisting God.⁴⁷ Citing Romans 13:5, Taylor wrote that 'whoever does in any case resist, shall receive damnation to himself, both here and hereafter' and that 'there is nothing in the world a greater destruction to its own ends, than the resisting or rebelling against government'.⁴⁸ Taylor stressed that the history of the Church showed that Christians should submit themselves to a tyrant such as Nero, 'for it is the will of God'.⁴⁹ Therefore, it is not lawful for subjects to take up arms against

⁴² Ibid., 13:454. Baxter had the same quotation. See Baxter, *A Christian Directory*, part IV, 16.

⁴³ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:455.

⁴⁴ Ibid., 13:461.

⁴⁵ God alone 'will take care to punish evil kings sufficiently: only we must not do it; we must not pray him to do it'. Ibid., 13:456, 461. Also see Baxter, *A Christian Directory*, part IV, 18. The topic of obedience was written mainly for subjects, not for kings; the casuists seldom mentioned the consciences of kings. Only Baxter provided some brief reminders suggesting a good kingship for them. See 'Memorandums to Civil Rulers for the Interest of Christ, the Church, and Men's Salvation' in Baxter, part IV, 5-8. Sanderson only touched it. See Sanderson, *Several Cases of Conscience*, 208. Perhaps this is because they believed that the kingship is born to do good.

⁴⁶ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:456; Baxter, *A Christian Directory*, part IV, 15.

⁴⁷ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:463.

⁴⁸ Ibid., 13: 457, 464.

⁴⁹ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:460, 466.

‘the supreme Power of the Nation, upon any Pretence whatsoever’.⁵⁰

In brief, the answer the English casuists gave to subjects is that subjects could disobey but they must not resist.⁵¹ A subject could disobey only on the grounds that ‘the law be manifestly and notoriously unjust’ or that the law ‘stood in competition with the honour of Christianity’, but a subject should not disobey ‘out of light doubt and scruple’, Sanderson added.⁵² Moreover, the English casuists maintained that when a subject disobeys the unjust command of the King, he is bound not only to ‘make not the least resistance’ but also to ‘endure whatsoever injury or contumely shall be brought upon him by the superior powers’.⁵³ This principle was based on the beliefs that the King is inferior to God alone but superior to every subject and that subjects could neither resist nor judge the King’s command. The English casuists in principle denied that subjects could resist a tyrant; even though they agreed that sometimes subjects could disobey, subjects should endure any penalty their superior gave them.⁵⁴

⁵⁰ Ibid., 13:453.

⁵¹ ‘It is always necessary therefore to be subject, but not always necessary to obey’. Sanderson, *Several Cases of Conscience*, 199. ‘Though in some cases it is lawful not to obey, yet in all cases it is necessary not to resist’ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:454.

⁵² Sanderson, *Several Cases of Conscience*, 215-16; Baxter, *A Christian Directory*, part IV, 15.

⁵³ Sanderson, *Several Cases of Conscience*, 205.

⁵⁴ ‘If some private persons be hurt or injured, [or] If the Subjects have some publick Grievances of which they justly may complain, they must not presently have a recourse (as if the safety of the people were in the extremest Jeopardy) to extraordinary Remedyes’. Ibid., 362.

5.2 Herbert's collections and the issue of conscience in the English civil war

As we will see, the manuscripts in Herbert's collections discussed the issue of resistance to tyrants within the framework adopted by the English casuists, particularly in relation to the authority of conscience and the sources of moral principles. Moreover, some of the viewpoints of the English casuists presented in section 5.1 above were shared by both the Royalists and the Parliamentarians, including that subjects were bound to obey any lawful command of a tyrant and that subjects could disobey the unlawful command of a tyrant, though they did not reach the same conclusions on the issue.

As mentioned in the introduction, three manuscripts of Herbert's collections – the latter part of 'A Treatise on Obedience to Magistrates' (E5-3-44), 'Treatise on the Powers of King and Parliament' (E5-3-46), and 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5-3-49) – focused on whether conscience grants that the people could resist a tyrant. Again, as analyzed in section 2 of Chapter 1 above, 'A Treatise on Obedience to Magistrates' comes from the third part of *The True Difference Betweene Christian Subiection and Unchristian Rebellion* (1586) by Thomas Bilson,⁵⁵ 'Treatise on the Powers of King and Parliament' is the first part of William Prynne's *The Sovereigne Power of Parliaments and Kingdomes* (1643), and 'Treatise on the Royal Prerogative' is extracted from *The Glorious Name of God, the Lord of Hosts* (1643) written by Jeremiah Burroughs. Moreover, 'A Treatise on Obedience to Magistrates' was probably a manuscript written by Herbert

⁵⁵ As I have shown in the last chapter, a part of Bilson's work favouring Parliament was printed in the early 1640s. See Bilson, *A Discourse upon Questions in Debate between the King and Parliament. With Certain Observations Collected out of a Treatise Called, The Diffrence between Christian Subjection, and Unchristian Rebellion*, (London, [publisher not identified], 1643).

after he read Bilson's work, and the other two treatises were transcribed by the same person.⁵⁶ This section intends not to reintroduce these three manuscripts but to put them in the context of the controversy. I will analyze the word conscience as used by both Royalists and Parliamentarians during the Civil War, including their views of the moral principles of conscience, i.e. God's law and its extension, human laws,⁵⁷ and discuss how these human laws were connected with such basic constitutional issues as the natures of the people, Parliament, and the King. At the same time, I will show how Herbert's manuscripts fit within the controversy. These manuscripts present the ideas that the safety of the people is superior to the King's prerogatives, that Parliament and inferior magistrates, like kings, are higher powers and are entitled to lead the people against tyranny, and that Parliament holds sovereignty of the kingdom and could lawfully bridle the tyrannical deeds of princes. The manuscripts strongly suggest that Herbert agreed with Parliament's arguments that resistance to tyrants may be justified on grounds of conscience.

In the early 1640s when the civil war broke out, conscience was discussed in relation to the question of whether people could lawfully resist a tyrant and not on other constitutional questions such as who – the King or Parliament – held the sovereignty in the kingdom.⁵⁸ In addition to being a practical understanding giving judgement to a particular act, conscience was, at the same time, a practical power urging people to devote their resources and lives to the war. Facing the Long Parliament taking up arms against the King, Henry Ferne published *The Resolving of Conscience upon This Question* (1642) and maintained that 'no man in Conscience

⁵⁶ See section 1.2.

⁵⁷ For example, these moral principles were revealed in the following question: whether the people denoted the private men or the whole people of the commonwealth, whether Parliament was created by and for the king or for the commonwealth, and whether the King was the deputy of God or the servant of the people?

⁵⁸ As I will show in the following paragraphs, constitutional arguments usually played a secondary or supporting role in addressing the question of lawful resistance to tyrants.

can be truly persuaded' by Parliament's justifications of taking up arms; instead, people should join the King on grounds of conscience to put down Parliament's rebellion.⁵⁹ Sharing Ferne's view, Dudley Digges wrote *The Unlawfulness of Subjects Taking up Armes against their Sovereigne* (1643), denouncing the Long Parliament for misleading the consciences of the people, who 'do not rightly apprehend what is truly advantageous' when taking up arms against the sovereign.⁶⁰ On the other side, William Prynne, whose treatise was written against that of Ferne, stressed that 'Parliaments present necessary Defensive Warre, is Iust and Lawfull both in point of Law and Conscience, and no Treason nor Rebellion'.⁶¹ Similarly, Jeremiah Burroughs's *The Glorious Name of God, the Lord of Hosts* (1643) and 'A Briefe Answer to Doctor Fernes Booke Tending to Resolve Conscience about the Subjects Taking up of Arms' (1643) were also responses to Ferne. Burroughs maintained that 'the satisfaction of the consciences of men in this thing is of great consequences in this time, that every man is bound to afford what help hereunto he is able'.⁶² Sharing the same stance, Henry Parker published *Observations upon Some of His Majesties Late Answers and Expresses* (1642) while William Bridge completed *Wounded Conscience Cured, the Weak One Strengthened, and the Doubting Satisfied* (1642). Both Parker and Bridge appealed to the consciences of the people to persuade them to take up arms. Conscience was thus an important theme in all the abovementioned works. Those supporting the King insisted that conscience could not be convinced to take up arms against the King, while the Parliamentarians held the contrary view. It is worth noting again that Prynne's and Burroughs's works provided the basis for the

⁵⁹ Ferne, *The Resolving of Conscience*, cover page.

⁶⁰ Dudley Digges, *The Unlawfulness of Subjects Taking up Armes against Their Sovereigne in What Case Soever* (Oxford: sn, 1643), 1.

⁶¹ William Prynne, *The Treachery and Disloyalty of Papists to Their Sovereignes: Together with the First Part of the Sovereigne Power of Parliaments and Kingdomes* (London: Printed For Michael Sparke Senior, 1643), 3rd part, 1.

⁶² Jeremiah Burroughs, *The Glorious Name of God, the Lord of Hosts* (London: Printed for R. Dawlman, 1643), to the Reader.

contents of Herbert's manuscripts 'Treatise on the Powers of King and Parliament' and 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power'. These works focused on conscience and supported the arguments of Parliamentarians.

The issue of taking up arms linked up closely with conscience since it not only granted a moral and intellectual judgement but also generated a practical power dictating an individual's action; in other words, people would be motivated to take up arms if their consciences were persuaded. This means that conscience was not a word of rhetoric – neither sides used the word meaninglessly –, but a word of power directing people's actions. Defining conscience as 'a faculty, or a habit of the practical understanding', the English casuist Sanderson said that 'the mind of Man doth by the discourse of reason apply' this understanding to his particular moral actions –⁶³ particular moral acts, including taking up arms, are the objects of the conscience.⁶⁴ Like Sanderson, Jeremy Taylor argued that conscience is 'used for directions in all cases of dispute of question or action', and that 'by it we are taught our duty'.⁶⁵ The issue of taking up arms is an object of conscience because conscience, by applying God's law and human laws to the issue, informs individuals of the actions they have to take. Hoping to 'give testimony to the truth for the directing of your [people's] Consciences', Ferne maintained that subjects should not 'carry on against all rules of Conscience' by taking up arms against the King so that they could be away from 'the Apostles prohibition, and damnation laid upon it'.⁶⁶ Defending the Long Parliament in taking up arms, Burroughs said that 'every man is bound to afford what help hereunto he is able' when his conscience is persuaded.⁶⁷ Both Ferne and Burroughs

⁶³ Sanderson, *Several Cases of Conscience*, 3.

⁶⁴ *Ibid.*, 26.

⁶⁵ Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 11:385.

⁶⁶ Ferne, *The Resolving of Conscience*, the Epistle.

⁶⁷ Burroughs, *The Glorious Name of God, the Lord of Hosts*, to the Reader.

show the close tie between conscience and the action of taking up arms.

Since conscience directs and motivates people's actions, both Royalists and Parliamentarians agreed that conscience holds a high authority. As Ferne said, 'I must speak for truth and conscience sake, from which neither King nor Parliament should make us swerve';⁶⁸ moreover, 'all Ages have asserted' the truths confirmed by conscience.⁶⁹ Except the statement of Ferne, no other obvious comments of the authority of conscience, as far as I know, could be found from either side; this absence does not mean that conscience holds no authority, but means that its authority, in their view, is so high that it was unnecessary to demonstrate it. When both sides argued their points, they assume the authority of conscience as a premise – Royalists argued that people should not resist a tyrant since conscience prohibits such kind of deeds while Parliamentarians held the contrary opinion on grounds of conscience as well.⁷⁰

Having shown that conscience was closely connected to the issue of resistance, and that both sides agreed on the high authority of conscience, this section will now consider the moral principles used when debating the question of whether the people could lawfully take up arms against the King. As we saw in the first section of this chapter, Sanderson held that the moral principles came from three sources – the light of nature, the light of Scripture, and the light of doctrine – and that these three lights revealed the law of God and its extension, human laws. Neither Parliamentarians nor Royalists proposed anything beyond the scope of what Sanderson wrote, though each reached different conclusions on the question. Royalists usually cited Scripture and reason as their grounds when arguing their viewpoints.⁷¹ As Ferne maintained, 'the

⁶⁸ Ferne, *The Resolving of Conscience*, the Epistle.

⁶⁹ Ibid.

⁷⁰ For example, Prynne said that 'I conceive affirmatively, that they [the people] may justly do it [taking up arms], both in point of Law and Conscience'. Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, pts 3, 2.

⁷¹ For both sides, nature and reason are usually interchangeable when it comes to the sources of the moral principles.

clear light of Divine Scripture and rectified Reason' were 'the onely rules of Conscience'.⁷² By the light of Scripture Ferne stressed that Romans 13 has clearly shown that resisting kings is unlawful and that 1 Peter 2:13-14 demands the submission of subjects to their kings, while by the light of reason he denoted some of 'the Fundamentalls of this government' that were not written into law – these fundamentals of the government, according to him, included the theory of the divine right of kings and the belief that 'the originall of power' is from God.⁷³ Similarly, when Digges argued that subjects by no means could resist their sovereigns, he appealed to both Scripture and nature. On the one hand Digges demonstrated that kings should not be resisted by citing 1 Peter 2:13, Proverbs 24:21-22, and Psalms 82:6,⁷⁴ while on the other hand he argued that kings are supreme in the world and 'non-resistance to the supream power [is] essential to the preservation of order'.⁷⁵

Likewise, supporters of Parliament, such as Prynne and Burroughs, grounded their arguments and viewpoints on the light of nature, the light of Scripture, and human laws. Burroughs argued that people could lawfully resist tyrants by focusing mainly on the interpretations of the Bible – such as 1 Samuel 23, which stated that King Saul was resisted by David – and on human laws.⁷⁶ Likewise, Prynne cited several passages of the Bible when he was arguing the same opinion.⁷⁷ Moreover, saying that human laws 'must direct the conscience', Prynne maintained that the laws of this kingdom grant that the people and Parliament could take up arms against a

⁷² Ferne, *The Resolving of Conscience*, the Epistle.

⁷³ Ibid., 13-16. In other words, Ferne separated the sources of the moral principles into two: Scripture and reason. By Scripture he meant laws given by God while by reason he meant the structure or order of the human powers. It is worth noting that when Ferne discussed the moral principles of reason, he usually cited Scripture as his illustrations – he mixed the two sources when arguing.

⁷⁴ Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereigne*, 33–34, 60.

⁷⁵ Ibid., 32.

⁷⁶ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 27, 115.

⁷⁷ Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd part, 63–66.

tyrant.⁷⁸ Criticizing the viewpoints of Ferne, Bridge in the opening of his work stated that ‘some [of his arguments were] drawn from nature, some from Scripture, some from the fundamentall lawes of the Kindomes, some from the being of Parliaments, and some from the common trust reposed on Princes’.⁷⁹ Although Bridge distinguished five sources of moral principles, these five sources did not go beyond the light of nature, Scripture, and human laws. It is worth noting that by the word nature, Bridge meant the natural instinct of each creature ‘to preserve it self’, whereas Ferne used the word in a different sense: in brief, by the light of nature, Ferne denoted the nature of the fundamental government rather than the nature or inclination of creatures.

Both sides agreed that the people must obey the commands of the King. Royalists took this point for granted, while Parliamentarians added the caveat that the commands must be lawful. Prynne wrote that the people could not ‘disobey, or violently with force of Armes resist the Kings, or any other lawfull Magistrates just commands, warrented either by Gods word, or the Law of England’.⁸⁰ Citing 1 Peter 2:13 and Romans 13, Goodwin argued that ‘the King is to be obeyed’, and agreed that ‘in this sense a King, or Kingly power and government may be said to be from God’.⁸¹

Both sides also agreed that the people could disobey the King’s command when it was contrary to God’s law. This point was not important for Parliamentarians since they maintained a harsher stance: in this kind of case the people could resist, as I will discuss in the following paragraphs. Arguing that the people’s obedience to their

⁷⁸ Ibid., 3rd pt, 9.

⁷⁹ William Bridge, *The Wounded Conscience Cured, the Vveak One Strengthened, and the Doubting Satisfied.: By Way of Answer to Doctor Fearn* (London: Printed for Benjamin Allen, 1642), 2. Henceforth, *The Wounded Conscience Cured*.

⁸⁰ Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd pt, 61.

⁸¹ John Goodwin, *Anti-Cavalierisme, or, Truth Pleading as Well the Necessity, as the Lawfulness of This Present War* (London: Printed by G. B. and R. W. for Henry Overton, 1642), 7.

sovereigns 'was never intended by God to be universall, but with limitation', Goodwin wrote that 'a mans obedience to the King should not be found disobedience against God'.⁸² 'Kings are not to be obeyed in any of those commands that are unlawfull',⁸³ Goodwin added, since 'no King is himself invested with any authority or power to doe any thing which is unjust, or unrighteous'.⁸⁴ Similarly, Royalists agreed that the people could disobey the unlawful commands of kings – but they did not agree with Parliamentarians that they could violently resist, as I will show later. Moreover, Royalists stated that this was the only circumstance in which the people could lawfully disobey their sovereigns, and this point echoes the opinions of the English casuists.⁸⁵ When speaking of the tyrannical command of sovereigns, Ferne maintained that subjects could give 'denials of obedience to his unjust commands'.⁸⁶ Like Ferne, Digges wrote that subjects had 'the liberty of denying obedience' in this kind of case since the obedience we owe to God precedes the obedience we owe to kings.⁸⁷

Both sides also agreed that the abuse of the law by the King, in cases when the command itself is lawful but the intention of the monarch was evil, could not justify subjects in taking up arms against him. Royalists advocated and propagated this point. Like the English casuists Sanderson and Taylor, Ferne cited Scripture and used the theory of the divine right of kings to show this point.⁸⁸ Saying that the King's 'powers are ordained of God', Ferne maintained that subjects must not resist a tyrant;

⁸² Goodwin, *Anti-Cavalierisme*, 9.

⁸³ *Ibid.*, 10.

⁸⁴ *Ibid.*, 17.

⁸⁵ For the opinions of the English casuists, see section 1 of this chapter.

⁸⁶ Ferne, *The Resolving of Conscience*, 23, 31.

⁸⁷ 'Magistrates can challenge no more right over our actions, then God gives them or we ourselves had, before we submitted them to their commands' and 'no inconveniencies from this doctrine rightly stated; God to be obeyed rather then men'. Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereigne*, 13.

⁸⁸ For Sanderson's and Taylor's viewpoints and arguments, see section 1.2 above.

even when the resistance was ‘made against abused Powers’, it was unlawful.⁸⁹ Moreover, Ferne wrote that according to Romans 13, ‘the Apostle gave his reasons against resisting even of abused Powers’.⁹⁰ Facing a tyrant abusing the law, subjects should view ‘the abuse of that Power as a judgement and scourge of God upon the people, and will use not Arms to resist the Ordinance under pretence of resisting the abuse’; instead, they could offer ‘cryes and prayers to God, petitions to the Prince, denials of obedience to his unjust commands, denials of subsidies, aids, and all fair means that are fit for Subjects to use’.⁹¹ And if the tyrant continued abusing the law after his subjects had tried all the above fair means, they ‘will rather suffer then resist’, and this will be the judgement of ‘a truly informed Conscience’.⁹² Digges concurred, arguing that ‘tyrannicall abuse of power doth not make taking up armes against the supreame governour lawfull’.⁹³

Although most supporters of Parliament did not deal with this particular issue – they merely passively agreed, and, moreover, they neither held that they were resisting a tyrant who abused the law, nor said that King Charles I abused the law, as I will show later –⁹⁴ Burroughs, the author excerpted in ‘Treatise on the Royal Prerogative’, did address this issue directly. He agreed with the Royalists that subjects could not take up arms against the King on the grounds of his abuse of laws. It is worth noting, however, that Burroughs did not cite the theory of the divine right of kings to support the point, but rather argued that lawful commands should not be resisted. To the question ‘may wee resist authority abused’, he answered that ‘that is

⁸⁹ Ferne, *The Resolving of Conscience*, 12.

⁹⁰ Ibid., 30.

⁹¹ Ibid., 31.

⁹² Ibid.

⁹³ Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereigne*, 97.

⁹⁴ For example, answering Ferne’s statement that the Long Parliament ‘resist not the power, but the abuse of the power’, Burroughs wrote that this was not the stance the Long Parliament took. He insisted that the Long Parliament ‘is resisting no power at all’. Jeremiah Burroughs, ‘A Briefe Answer to Doctor Fernes Booke Tending to Resolve Conscience about the Subjects Taking up of Arms’, in *The Glorious Name of God, the Lord of Hosts* (London: Printed for RDawlman, 1643), 124.

abused Authority, when those to who[m] power of making Lawes belong, shall make evill Lawes; in this case no helpe, but passive obedience, or flying, vntill some way may be taken for rectifying that Authority that is abused'.⁹⁵ Burroughs meant that when the King abuses the law, issuing a lawful command out of a bad intention, subjects could only accept and endure it. As he put it, 'if indeed some unjust Law should give him [the King] any power to doe wrong, the execution of this would be the abuse of his power, and therein it is granted a true informed conscience would rather suffer than resist'.⁹⁶ Burroughs agreed that people should obey 'whatsoever was commanded by the King' unless the commands were against God's law and 'the Laws of the Countrey over which they are'. In brief, people must yield to all lawful commands 'for conscience sake'.⁹⁷

Both sides also agreed that subjects or private men and Parliament should not take up arms against the King's person. This point was also presented in 'A Treatise on Obedience to Magistrates' by Herbert. It is worth noting here that this was the general viewpoint of Parliamentarians in the early 1640s before the idea of regicide emerged. After Prynne asked whether 'Parliament may lawfully raise an Army to goe immediately and directly against the very person of the King', he answered that the Long Parliament 'and their Army too, have in sundry Remonstrance, Declarations, Protestations, and Petitions, renounced any such disloyall intention or designe at all',⁹⁸ and he stressed that 'no defying language was given, [and] no act of violence was used' against the King.⁹⁹ Claiming that the Long Parliament's violent resistance was 'not properly or directly against the King', Goodwin wrote that we 'never

⁹⁵ 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (National Library of Wales, n.d.), fol. 2r; Burroughs, *The Glorious Name of God, the Lord of Hosts*, 32.

⁹⁶ Burroughs, 'A Briefe Answer', 139.

⁹⁷ Ibid., 111.

⁹⁸ Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd pt, 62.

⁹⁹ Henry Parker, *Observations upon Some of His Majesties Late Answers and Expresses* (London, 1642), 27.

travelled with any desires or thoughts that way'; at the same time, Goodwin disagreed with the Jesuits and maintained that neither Parliament nor subjects could 'take away his [the King's] life'.¹⁰⁰ Goodwin argued that 'we conceive it to be a just Prerogative of Kings in what case soever, to be secure from the violence of men' and that the King's life could 'be reaped and gathered only by the hand of God himselfe'.¹⁰¹ Likewise, 'A Treatise on Obedience to Magistrates' stated that 'no Private Person is warranted to lay his Hand vpon the Lords anointed, or to make Publique talke of his faults' and that 'the golden scepter hath not called every man to speake in such a case, except to God on his knees'.¹⁰² It is worth noting, however, that Parliamentarians did not exclude lawful resistance against the armies of the King, especially when they consisted of papists and the malignant.

The above analysis shows that both sides' arguments, including those contained in Herbert's manuscripts, shared many points concerning the sources of conscience and the obedience of subjects. However, the two sides reached different conclusions on the question of whether the people could resist a tyrant.

Both sides claimed that they had launched a defensive war, being driven by necessity to persuade the people's consciences to choose their side and take up arms. The Long Parliament argued that theirs was a defensive war to justify resisting the King, while Royalists used that argument to appeal to the people to help put down the rebellion. Although this argument in principle belongs to the light of nature – the idea of necessary defence was close to a natural instinct of creatures – both sides, as we will see, combined appeals to nature, Scripture and human laws when arguing this point.

¹⁰⁰ Goodwin, *Anti-Cavalierisme*, 6, 11.

¹⁰¹ Ibid., 11.

¹⁰² 'Account of "Ye Present Troubles"; and a Treatise on Obedience to Magistrates' (National Library of Wales, n.d.), fol. 3r.

Appealing to subjects to help protect the King's power to raise the army against Parliament, the Royalists maintained that the King had launched a defensive war. Insisting that the Long Parliament was the first to take up arms against the King, Ferne wrote that the resistance the Long Parliament claimed was pointless since 'resistance doth in the word itself and in their pretence presuppose a power and force first made against them'.¹⁰³ Moreover, Ferne maintained that it was 'His Power of Arms and ordering the Militia of the kingdome, His Power of denying in Parliament, His disposing of the offices of State, and such like'; hence, the King, facing the violent resistance, 'is upon the defensive, for the maintaining of what he justly holds his right, or is bound by Oath to defend'.¹⁰⁴ Meanwhile, after quoting 1 Samuel 26, which indicated that David 'offered no act of violence to Saul, but still gave place and withdrew from him', and returned the spear of Saul, Ferne wrote that 'but now the Kings Spear and his Cruse, his Ammunition and his necessary Provisions are taken away, intercepted, not restored though often demanded'. By the above arguments Ferne maintained that the King launched a defensive war against the Long Parliament's encroachments on the King's power and properties. Likewise, Digges maintained that 'His Majesty [is] fighting onely to preserve Himselfe, and the rights of the Subjects' since the Long Parliament had taken away 'his civill power', and that the Parliamentary army was 'actually raised against his personall strength'.¹⁰⁵ Ferne and Digges echoed 'The King's Proclamation Condemning the Militia Ordinance' issued on May 27, 1642. Claiming that the power of raising the army to protect the kingdom belongs to the King alone and that 'it is by his royal seigniory straightly to

¹⁰³ 'Armed men were thrust into Hull, the Kings Arms seized against his will, the Militia set up, and by that the Kings subjects drawn into Arms before the King had anything to oppose but Proclamations'. Ferne, *The Resolving of Conscience*, 36.

¹⁰⁴ Ibid., 38-39. CF: 'As we see at this day to our astonishment, first the power of arms taken from the Prince by setting up the Militia, then that power used against him by an army in the field.' Ibid., 3.

¹⁰⁵ Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereigne*, cover page, 5.

defend wearing of armour and all other force against the peace’, the proclamation denounced the Long Parliament and its supporters ‘as violators of the laws and disturbers of the peace of this kingdom’.¹⁰⁶ At the same time, the proclamation stated that ‘all subjects are bound to aid the King as their sovereign lord’.¹⁰⁷

The Long Parliament and its supporters, including two authors of Herbert’s manuscripts Prynne and Burroughs, also claimed that they had launched a defensive war. They appealed to the people to join their side to protect the religion, liberty, and property from the invasion of the northern army, papists, and delinquents – though they carefully excluded the King from this list of opponents.¹⁰⁸ After asking whether the Long Parliament was taking up arms against the King, Burroughs answered that ‘it is not against the King, it is defensive onely, to defend our lawfull liberties, our estates’.¹⁰⁹ ‘The Law of nature and Script[ure] teaches us to defend ourselves from violence, and wrong’, Burroughs added.¹¹⁰ Citing Ferne’s statement that David resisted Saul by force ‘to save his person from Cut-throats’, Burroughs claimed that the same applied to the Long Parliament, and that the army they were raising was ‘to save Parliament and People from Cut-throats’.¹¹¹ Agreeing with Burroughs, Prynne maintained that the ‘necessary Defensive Warre’ of the Long Parliament was lawful both in point of the laws of the kingdom and in conscience.¹¹² Moreover, after claiming that ‘this Majesty first began this warre’ and summoned ‘an Armie of

¹⁰⁶ Gardiner, *The Constitutional Documents of the Puritan Revolution, 1625-1660*, 169–70. ‘The King’s Letter sent with the Commissions of Array to Leicestershire’ (June 12, 1642) presented the same view. See *Ibid.*, 179.

¹⁰⁷ *Ibid.*, 169.

¹⁰⁸ Burroughs, ‘A Briefe Answer’, 141–42; Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd pt, 1–2.

¹⁰⁹ ‘Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power’, fol. 1r; Burroughs, *The Glorious Name of God, the Lord of Hosts*, 27. CF: ‘This doth noth concern this raising of Armes, for it is for defence of ourselves, not offence against Gods Anointed’. Burroughs, *The Glorious Name of God, the Lord of Hosts*, 36.

¹¹⁰ ‘Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power’, fol. 1r.

¹¹¹ Burroughs, ‘A Briefe Answer’, 114. Prynne had the same argument, see Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd pt, 94–95.

¹¹² *Ibid.*, 3rd pt, 1.

Malignants, Papists, Forraigners; against his Parliament, Kingdome, [and] People’, Prynne ‘conceive[d] affirmatively, that they may justly do it [launch a defensive war], both in point of Law and Conscience’.¹¹³ Prynne maintained that the people, by taking up arms under the direction and command of Parliament, could lawfully ‘preserve the Priviledges of Parliament, their Lawes, lives, liberties, estates, properties, [and] Religion’.¹¹⁴ Furthermore, Prynne insisted that the Long Parliament’s ‘necessary defence’ was not an ‘active offence’,¹¹⁵ and the resistance had ‘no one Text, nor Example in Scripture to impeach its lawfulness’.¹¹⁶ Categorizing the necessary defensive war as an argument of nature, Bridge said that the people by all means could lawfully resist on grounds of ‘selfe preservation’ since ‘it is the most naturall work in the world for everything to preserve itselfe’ and ‘no humane power is above the law of nature’.¹¹⁷ Bridge did not mean that subjects or private men themselves could resist the King on their own; they could do so when they were led by Parliament.¹¹⁸ Adopting a similar argument, Goodwin told the people that ‘you are to stand up in the defence of your Lives, your Liberties, your Estates, your Houses, your Wives, your Children, your Brethren’ and that they also acted ‘in defence of his Majesties royall person, honour, and estate; all these are now in eminent danger to suffer by that accursed retinue of vile persons’.¹¹⁹ Moreover, Goodwin stressed that the people should follow ‘the honourable Senate of both Houses of Parliament’ to defend their lives, liberties, religion, and estates, and ‘here is nothing in all this but what the manifest Law of God, and the common light of nature, not only warranteth

¹¹³ Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd pt, 2.

¹¹⁴ Ibid.

¹¹⁵ Ibid., 3rd pt, 10. CF: ‘The act [of the Long Parliament taking up arms] meereley defensive, or rather passive’. Parker, *Observations upon Some of His Majesties Late Answers and Expresses*, 28.

¹¹⁶ Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd pt, 67.

¹¹⁷ Bridge, *The Wounded Conscience Cured*, 1–2.

¹¹⁸ ‘This is the case of Parliament’. Ibid., 2.

¹¹⁹ Goodwin, *Anti-Cavalierisme*, 5, 37–41.

and alloweth in all men [to resist]’.¹²⁰ Goodwin even described this necessary defence as ‘a Martyrdome too, or suffering for Christ’.¹²¹ These statements echo the ‘Militia Ordinance’ issued by Parliament in March, 1642. Warning that ‘the bloody counsels of Papists and other ill-affected persons’ had been rising in rebellion in the kingdom, the Long Parliament, according to this ordinance, decided to take up arms ‘for the safety therefore of His Majesty’s person, the Parliament and kingdom in this time of imminent danger’.¹²²

Having shown the appeals to nature made by both sides to justify their wars as defensive, I will now present arguments from both sides deriving from Scripture. Since the Bible was a crucial source of moral principles, both Royalists and Parliamentarians often cited verses to justify their stances, and they often reached different conclusions even when citing the same verses. Again, as the following paragraphs will show, the two authors of Herbert’s manuscripts ‘Treatise on the Powers of King and Parliament’ and ‘Treatise on the Royal Prerogative’, Prynne and Burroughs, supported Parliament’s grounds. Moreover, ‘A Treatise on Obedience to Magistrates’ specifically cited biblical cases as illustrations.

A very common controversy came from the different interpretations on the interactions between David and King Saul in 1 Samuel. Supporters of Parliament stressed that David resisted Saul by force while Royalists emphasized that David gave no harm to Saul. Noting that David summoned an army of 600 to resist Saul, Burroughs argued that the people could stop the King’s unlawful command as David and his army had done.¹²³ Moreover, Burroughs maintained that Parliament and people could lawfully take up arms in order ‘to save Parliament and People from

¹²⁰ Goodwin, *Anti-Cavalierisme*, 5, 40-41.

¹²¹ Ibid., 34-35.

¹²² Gardiner, *The Constitutional Documents of the Puritan Revolution, 1625-1660*, 166-67.

¹²³ Burroughs, ‘A Briefe Answer’, 114.

Cut-throats', as I have mentioned above.¹²⁴ However, insisting that Scripture provides no ground for people to resist their sovereigns, Ferne said that even though David raised an army, the army 'was onely to secure his person against the cut-throats of Saul', and they did not do any harm to the very person of Saul.¹²⁵ Furthermore, describing this case as an 'extraordinary' one, Ferne said that David 'was anointed and designed by the Lord to succeed Saul, and therefore he might use an extraordinary way of safeguarding his person'.¹²⁶ Another common controversy came from 1 Samuel 14:45, which stated that Saul spared the life of Jonathan because of the intervention of the people of Israel. By claiming that the people had 'lawfully rescued innocent Ionathan, from that unjust death which his Father King Saul twice vowed hee should undergoe', Parliamentarians Prynne and Goodwin stressed that the verse indicated that people could refuse, and even resist, the unlawful command of a king.¹²⁷ However, quoting the same verse, the Royalist Ferne stressed that 'the people drew not into arms of themselves, but being there at Sauls command, did by a loving violence and importunitie hinder the execution of a particular and passionate unlawfull command'.¹²⁸ Similarly, in this case Parliamentarians stressed the lawfulness of resistance to unlawful commands while Royalists emphasized the submission of the people, who did no harm to the King.

Other verses of the Bible were also debated;¹²⁹ however, this section intends not

¹²⁴ Ibid.

¹²⁵ Ferne, *The Resolving of Conscience*, 6.

¹²⁶ Ibid.

¹²⁷ Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd pt, 71. For Goodwin's statements, see Goodwin, *Anti-Cavalierisme*, 11–12. After discussing Jonathan's case, Prynne wrote that 'some mens patient suffering death and injuries without resistance, is no better an argument, that all therefore must so suffer without opposition, then that all men out to yeeld their purses up to high-way theeves, or their persons, goods, ships, to Turks and Pyrates, without fight or resistance'.

¹²⁸ Ferne, *The Resolving of Conscience*, 6.

¹²⁹ Exodus 1:15–20 was another example where the verses showed that midwives refused the command of King Pharaoh to kill the male children of the Hebrew people. 2 Kings 6:32 was also a controversial verse where the prophet Elisha shut the door against the King's messengers that came to take away his head. See Ferne, *The Resolving of Conscience*, 6–8; Prynne, *The Sovereigne Power of Parliaments and*

to introduce additional illustrations for the following two reasons. First, from the above two examples of 1 Samuel, I have shown that both sides had preconceptions about the verses they aimed to interpret; each side stressed the point they intended to argue and refuted the other side's interpretation. Their preconceptions made their additional interpretations of Biblical verses redundant. The second reason is that the two examples I have given are sufficient for illustrating how both sides used Scripture, and, more importantly, for showing Herbert's possible viewpoints – these two illustrations were particularly mentioned by Herbert's collection E5/3/44 'A Treatise on Obedience to Magistrates'.

After discussing the question of what could be done when 'a Prince shall sett himselfe professedly ag[ains]t the whole k[ing]dome' – this was also the definition of tyrant implied in the works of parliamentary supporters and of the English casuists –, ¹³⁰ 'A Treatise on Obedience to Magistrates' then cites the two illustrations in 1 Samuel. ¹³¹ Revealing 'the Case betweenes Saul, and Jonathan, when the people delivered the good sonne out of the bad father's hands. 1 Sam[uel] 14. 45', ¹³² the treatise states that 'though one may not lay hands vpon the Lords anointed, yet one may hold a mad man's hand' – by one it means 'the Nobles, and Peeres of a state,' who could resist and bridle the tyrannical deeds of princes. ¹³³ Moreover, 'A Treatise on Obedience to Magistrates' describes taking up arms to control the tyrannical governance as the necessary defence of David against Saul, when there was no other

Kingdomes Divided into Foure Parts, pts 3, 64–66; Goodwin, *Anti-Cavalierisme*, 11–14; Burroughs, *The Glorious Name of God, the Lord of Hosts*, 33.

¹³⁰ CF: 'what if they [kings] be evil and unjust, cruel and unreasonable enemies of their people, and enemies of mankind?'. Taylor, *The Whole Works of the Right Rev. Jeremy Taylor*, 13:465, 467.

¹³¹ 'Account of "Ye Present Troubles"; and a Treatise on Obedience to Magistrates', fol. 3r.

¹³² Ibid.

¹³³ 'Account of "Ye Present Troubles"; and a Treatise on Obedience to Magistrates', fol. 3v. 'Those by their first Justification, and proper place were ordained to bee bridles to an ill governor, to pull him, and to hold him to the duties of his kingly place, when he shall breake out by an vniversall forces, and Tyranny vnsufferable'. Ibid., fol. 4r.

remedy.¹³⁴ Meanwhile, the treatise emphasizes that in such a case we could not say ‘David by this [resistance] did rebell ag[ains]t Saul’ since David ‘would not lay a hand vpon the king, though having him twice in his power’.¹³⁵ In brief, it cites the conflicts between Jonathan and Saul and between David and Saul to justify taking up arms against a tyrant, and such resistance would be as lawful as that done by David.¹³⁶

That ‘A Treatise on Obedience to Magistrates’ uses 1 Samuel is, by itself, revealing of Herbert’s viewpoint. Although both Prynne’s and Burroughs’s works discussed the verses of 1 Samuel and other verses of the Bible, we see Herbert’s corresponding manuscripts ‘Treatise on the Powers of King and Parliament’ and ‘Treatise on the Royal Prerogative’ – again, the former came from Prynne’s work while the latter from Burroughs’s – did not transcribe any biblical discussion from their works. Only when Herbert came to write ‘A Treatise on Obedience to Magistrates’ did he discuss the abovementioned verses of 1 Samuel.¹³⁷ And from the discussion of the two cases of 1 Samuel we can see that this treatise is in favour of Parliamentarians’ interpretation of the same cases: though people could not do any harm to a tyrant, they could bridle his tyrannical deeds. The treatise thus strongly suggests that Herbert personally agreed with the viewpoints of parliamentary supporters.

Having discussed both sides’ arguments derived from Scripture, I now turn finally to how both sides exploited the third and final source of the moral principles, i.e. human laws, to argue their positions. Although both sides agreed that human laws are extensions of God’s law, they held different opinions about the content of the law, especially concerning fundamental constitutional issues. These issues mainly

¹³⁴ Ibid.

¹³⁵ Ibid., fol. 4v.

¹³⁶ ‘Wise Abigail saith that (for all this) hee [David] fought the Lords battells. 1 Sameul 25. 28’. Ibid., fol. 5r.

¹³⁷ See my analysis in section 1.2 above.

concerned three domains: (a) the natures of the King and of the people of the kingdom – is the King inferior to God alone, or is he subordinate both to God and to human laws (and hence the servant of the kingdom and the people)? (b) the higher powers – on whom has God bestowed the power and obligation to govern, the King only or the King and also other inferior magistrates and Parliament?¹³⁸ (c) the sovereign of the kingdom – who is the sovereign, the King or Parliament? The different opinions of both sides of the above constitutional issues will reveal their different interpretations of how human laws derived from God’s law. It is worth noting that in the following discussions, although both sides frequently cited Scripture to support their arguments, I do not categorize these points as arguments derived from the light of Scripture since they debate the theoretical basis of human laws and not the import of Biblical verses.

5.2.1 The natures of the King and of the people

Both sides had different viewpoints of the nature of the King, an issue of much importance for human laws. Royalists maintained that the King is subject to God alone and above both the laws of the kingdom and his subjects. Moreover, deriving their viewpoint from the theory of the divine right of kings, they held that the King is the representative of God, and hence could not be resisted. Thus Ferne and Digges argued that the King, according to 1 Peter 2:13 and Romans 13, is ‘the higher Power according to St Paul’, ‘the Supreme according to St Peter’, and ‘the Father of the Commonwealth’; therefore, subjects must obey the King.¹³⁹ Furthermore, they

¹³⁸ Magistrate this word in seventeenth century usage means governor; it can denote either a King or an inferior governor, as Herbert’s manuscript ‘A Treatise on Obedience to Magistrates’ (E5/3/44) implies.

¹³⁹ Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereaigne*, 33, 45–48; Ferne, *The Resolving of Conscience*, the Epistle.

described kings as ‘Gods’, following Psalms 82:6, and also cited Romans 13:2 (‘whosoever resisteth the power, resisteth the ordinance of God, and they that resist shall receive to themselves damnation’).¹⁴⁰ Jeremy Taylor had made just the same statement, as I have shown in the first section of this chapter. By demonstrating the place of the King, Digges maintained that the King ‘is Dei Minister, not the peoples servant, not their creature’.¹⁴¹ ‘All are under the King, and the King is under God only’, Digges added.¹⁴² It is worth noting that although Digges later said that the King ‘is under God and the [human] Law, because the Law makes him King’, there was no paradox for him. As Digges added later, the King basically agreed to govern according to the established laws for convenient reasons, but he by all means could surpass human laws when necessary.¹⁴³ Stating a similar viewpoint, Sanderson said that it is lawful for the King ‘without order, and in case of necessity, for the defence of his Country, to do some thing either besides, or against the Law’ since the King is superior to human laws.¹⁴⁴

Since the King is under God only, Digges maintained that the King is not only above any particular subject – i.e. *major singulis* – but also ‘hath greater right, and larger power, then even all the people could bestow upon him’ – i.e. he refuted *minor universis*, an important Parliamentary argument that the King is subservient to the people considered as a whole.¹⁴⁵ Stressing that ‘the supream Magistrate hath more power then the whole people, and is vice Deus, [and] Gods vicegerent’, Digges was

¹⁴⁰ Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereigne*, 34, 48; Ferne, *The Resolving of Conscience*, 5–10.

¹⁴¹ Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereigne*, 33.

¹⁴² Ibid., 76.

¹⁴³ ‘His Majesty freely confesses this obligation [that he ought to governe according to those standing rules], and since experience hath taught him the benefits of strict observance, he will not be intreated upon what plausible pretences soever to recede from their known and certain direction. But if he should swerve from these rules, he is not liable to any punishment, nor compellable by strong hand; not for want of sinne, for he offends highly in that case, but for want of a superiour jurisdiction.’ Ibid., 76–77.

¹⁴⁴ Sanderson, *Several Cases of Conscience*, 354.

¹⁴⁵ Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereigne*, 61–62.

opposed to calling ‘Gods minister the peoples Servant’, as parliamentary supporters did.¹⁴⁶

Moreover, Digges insisted that the King, being the supreme magistrate, ‘is the representative of all, he is legally the whole people’, and that only by not resisting the power of kings could subjects obtain their well-being.¹⁴⁷ Stating that some people were misled by the Long Parliament, Digges said that they ‘do not rightly apprehend what is truly advantageous’ since their well-being depends on the King and his governing power.¹⁴⁸ People are able to obtain the greatest happiness on condition that they give ‘up of every mans particular power into his [the King’s] disposal, so that he may be inabled to force those who are unwilling upon some private ends, to be obedient for the common good’.¹⁴⁹ Although Digges confessed that sometimes unjust judicial sentences might exist in the legal system, he maintained that only by enduring ‘this possible evill’ could ‘a farre more considerable good’ be obtained.¹⁵⁰ Moreover, he claimed that the King’s ‘interests are the same with the Subjects, which is strong State security’,¹⁵¹ and that ‘the King alone is sworne to protect us’.¹⁵² In brief, by submitting all to the King and trusting him subjects could obtain the greatest happiness. Thus Digges argued, subjects should not resist their sovereigns; had this governing system collapsed, the happiness of subjects would have faded away as

¹⁴⁶ Ibid., 63-64.

¹⁴⁷ Ibid., 33.

¹⁴⁸ Ibid., 1.

¹⁴⁹ Ibid., 4.

¹⁵⁰ Ibid., 6. Sanderson had a similar point of view writing that ‘If some private persons be hurt or injured, [or] If the Subjects have some publick Grievances of which they justly may complain, they must not presently have a recourse (as if the safety of the people were in the extreme Jeopardy)’. Sanderson, *Several Cases of Conscience*, 361.

¹⁵¹ Digges, *The Vnlawfulness of Subjects Taking up Armes against Their Sovereigne*, 20, 74.

¹⁵² Ibid., 8. Ferne shared this opinion. Stating that King Charles I was labelled with ‘the hatefull notions of Tyrant, Subverter of Religion, and Laws, a Person not to be trusted, or at least as one seduced to such evil designs, by wicked Counsel’, Ferne denied that anyone could ‘in Conscience think his Majesty since the beginning of this breach was ever in such a Condition of strength as might threaten the Liberty of the Subject, or destroy Parliaments’. Ferne, *The Resolving of Conscience*, 34-44.

well.¹⁵³

Proceeding from the belief that subjects could only obtain happiness by not resisting their sovereigns, Royalists objected to the idea that *Populi salus, suprema lex*, i.e. the welfare of the people is supreme law, a very important argument of supporters of Parliament, as I will show later. Describing the idea as ‘the Engine by which the upper roomes are torne from the foundation, and seated upon fancy onely, like Castles in the aire’, Digges maintained that if the King were to be resisted, the people would not have their happiness.¹⁵⁴ Likewise, Sanderson in 1646 bemoaned the fact that recently some people ‘under the pretence of Conscience, or of Christian liberty’ tried to ‘overthrow all the force and frame of the Ecclesiastic Government, so under the pretence of Civil liberty, or the liberty of the Subject’; moreover, they ‘presently defend[ed] themselves, and their manners, with this safety of the people’, and maintained that ‘this alone [was] to be preferred to all Laws, Kings, Ordinances, and Customs whatsoever’.¹⁵⁵ Sanderson implied that the Long Parliament, being ‘factious Citizens’, abused the maxim of the safety of the people ‘to despise all Laws and Ordinances’, and ‘to revenge themselves upon the oppressors by force of Armes’.¹⁵⁶ Sanderson then explained that in this maxim the people denotes ‘the Prince and Subjects together’, not excluding the King.¹⁵⁷ Moreover, he added that since ‘the Kings Majesty is sacred’, ‘the safety of the King alone, was to be preferred above the safety of them all [subjects]’; hence, to protect the safety of the people one should protect the safety of the King first.¹⁵⁸ The goal of Sanderson’s argument was to say

¹⁵³ Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereigne*, 7.

¹⁵⁴ Ibid.

¹⁵⁵ Sanderson, *Several Cases of Conscience*, 339.

¹⁵⁶ Ibid., 342.

¹⁵⁷ Ibid., 344-47.

¹⁵⁸ Ibid., 349. It might be argued that Sanderson distorted the maxim. The strategy Sanderson took was to claim that the maxim of the safety of the people includes the subject and the King. And he then cited the theory of divine right monarchy – another belief not belonging to the maxim itself – to claim that the King’s safety supercedes that of the subject, and that the safety of the subject depends on that of the

that the maxim could not be used as a justification for people to resist the King; instead, the safety of the King is always the priority since the 'the Care of the publick safety...depend[s] wholly on the will of the Prince, and nothing at all on the will of the people'.¹⁵⁹

Since royalists believed that the King, being the deputy of God, receives his power from God, they also objected to the idea that the people of the kingdom could take back the power of the King. Responding to the Long Parliament's argument that 'if the Prince, say they, will not discharge his trust, then it falls to the people or the two Houses to see to it, and to reassume that power, and thereby to resist', Ferne denied that the people or Parliament could do so since the King's power is not from the people.¹⁶⁰ When a man becomes a king either by election or by succession, 'the Lords hand also and his oyl is upon the person' and he is then 'the Lords anointed, and the minister of God'; at this time, 'those hands of the people which were used in lifting him up to the Crown, may not again be lifted up against him, either to take the Crown from his head, or the sword out of his hand,' Ferne added.¹⁶¹

In the eyes of Parliamentarians, the King, though he is supreme, is still a member of the kingdom, and his place is under both God and human laws. Agreeing with Royalists that the King is the supreme governor,¹⁶² Burroughs argued that 'in the same place he is made an ordinance of man, and therefore to be limited by man'.¹⁶³ Citing 1 Peter 2:13,¹⁶⁴ Burroughs maintained that the King and all inferior governors,

King.

¹⁵⁹ Sanderson, *Several Cases of Conscience*, 354.

¹⁶⁰ Ferne, *The Resolving of Conscience*, 18.

¹⁶¹ *Ibid.*, 19.

¹⁶² Parker showed the same view. Agreeing that 'Princes are called Gods, Fathers, Husbands, Lords, Heads', Parker said that these descriptions 'do illustrate some excellency in Princes'. Parker, *Observations upon Some of His Majesties Late Answers and Expresses*, 18.

¹⁶³ Burroughs, 'A Briefe Answer', 122.

¹⁶⁴ 1 Peter 2:13 reads 'Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king, as supreme'.

according to St. Peter, belonged to ‘human Ordinance’ or ‘human creation’.¹⁶⁵ Moreover, Burroughs added that ‘kingdomes were not made for Kings, but Kings rather for kingdomes’.¹⁶⁶ Showing the idea of the limited monarchy, Burroughs said that the King ‘is supream, but not absolute’.¹⁶⁷ William Bridge also said that the King is an ordinance of man. Quoting and interpreting Judges 8:22 and Judges 9:6, Bridge maintained that the King receives his power ‘originally from the people themselves, as appears by the government of the Judges and Kings of Israel’.¹⁶⁸ Emphasising the importance of the people and of the law of the land, Parker said that ‘power is originally inherent in the people’, and ‘man is the free and voluntary Author, the Law is the Instrument, and God is the establisher of both’.¹⁶⁹ Parker’s statements weakened the Royalists’ argument that the King is above everything except God.

After showing that the King is under human laws and a human ordinance – not a superior or creator of the kingdom –, Parliamentarians then explained the duty or the trust of the King: the King was entrusted by the kingdom and the people to protect their safety. Parker wrote that ‘all good Princes without any expresse contract betwixt them and their Subjects, have acknowledged that there did lie a great and high trust upon them’, and the trust requires the King to protect the safety of subjects.¹⁷⁰ The King, therefore, is not entitled to ‘have so unconditionate and high a proprietie in all our lives, liberties and possessions’, and if he did, he would be ‘not borne for the

¹⁶⁵ Burroughs also wrote ‘that such and such men should have this power, and how much of this power should be put upon this man, and how much upon that, this is from man’. Burroughs, ‘A Briefe Answer’, 126.

¹⁶⁶ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 27.

¹⁶⁷ Burroughs, ‘A Briefe Answer’, 122. Parker also reveals the same idea by claiming that ‘the word Trust is frequent in the Kings Papers, and therefore I conceive the King does admit that his interest in the Crowne is not absolute, or by a meere donation of the people, but in part conditionate and fiduciary’. See Parker, *Observations upon Some of His Majesties Late Answers and Expresses*, 1642, 4.

¹⁶⁸ Bridge, *The Wounded Conscience Cured*, 4. Judges 8:22 reads ‘then the men of Israel said unto Gideon, Rule thou over us, both thou, and thy son, and thy son’s son also: for thou hast delivered us from the hand of Midian’ while Judges 9:6 goes ‘and all the men of Shechem gathered together, and all the house of Millo, and went, and made Abimelech king, by the plain of the pillar that was in Schechem. plain: or, oak’.

¹⁶⁹ Parker, *Observations upon Some of His Majesties Late Answers and Expresses*, 1.

¹⁷⁰ *Ibid.*, 4.

people’, but merely for himself.¹⁷¹ Bridge likewise argued that the people have trusted the King for ‘the safety and security of the Kingdome, [and] the safety and welfare of the State, [but] not that the King might be great and the subjects slaves’.¹⁷² Parker and Bridge thus held that when a prince violates the trust and does not protect the safety of the kingdom and of the people, the people could lawfully resist. As Parker put it, ‘wrong and violence may be repressed by one for the good of all, not that servilitie and drudgerie may be imposed upon all, for the pomp of one’.¹⁷³ Bridge also commented that people would intend to be slaves if they ‘should have no power to take up armes for their owne defence because they had trusted the prince therewithall’.¹⁷⁴

Meanwhile, parliamentary supporters maintained that Parliament, like the King, is trusted by the kingdom to protect the safety of the people. Paralleling Parliament with the officers in King David’s time, Bridge wrote that ‘the Parliament are trusted by the Common-wealth’ to protect the safety of the kingdom and that of its members, including the people and the King.¹⁷⁵ Similarly, Parker argued that ‘Parliaments have the same efficient cause as monarchies, if not higher’, and that ‘God and the Law operate as the same causes, both in Kings and Parliaments, for God favours both, and the Law established both, and the act of men still concures in the sustentation of both’.¹⁷⁶ By arguing that the Parliament, like the King, is favoured by God, the law of the land, and the people, Parker maintained that the people have reserved some trust to the King, and some to Parliament; moreover, ‘this reservation [to Parliament] is not at all inconsistent with the Princes trust’, but ‘it is very ayding and strengthening to that

¹⁷¹ Ibid., 5.

¹⁷² Bridge, *The Wounded Conscience Cured*, 6.

¹⁷³ Parker, *Observations upon Some of His Majesties Late Answers and Expresses*, 19.

¹⁷⁴ Bridge, *The Wounded Conscience Cured*, 6.

¹⁷⁵ Ibid., 3, 5. CF: ‘1 Chro[nicles] 13:1 wherefore seeing the King is to look to the safety of the Kingdome, and that because he is trusted therewith by the people, and the Parliament are as well trusted by the people with the safety of the land’. Ibid.

¹⁷⁶ Parker, *Observations upon Some of His Majesties Late Answers and Expresses*, 5.

trust', added Parker.¹⁷⁷

Parliamentarians also held that *populi salus, suprema lex*, i.e., the safety of the people is the supreme law. As Parker emphasized, 'the safetie of the people is to bee valued above any right of his [the King's]'.¹⁷⁸ Depicting the royalty as the means and the people as the end, Parker wrote that the royalty is not for itself, but for 'the prosperitie of Gods people, and that end is more sacred then the means'.¹⁷⁹ Likewise, describing the King's prerogative as the means and the people's welfare as the end, Parker said that 'wee must rank the Lawes of libertie [i.e. *populi salus, suprema lex*] in the first Table, and Prerogative in the second, as Nature doth require'.¹⁸⁰ Since Parker held that the King 'was erected to preserve the Commonaltie, [and] the Commonaltie was not created for his service', it followed that the King's power is 'secondary and derivative', not primary and original, and that 'though he be singulis Major, yet he is universis minor'.¹⁸¹ The power of the King, Parker insisted, originates from the people of the kingdom.¹⁸² Arguing that the kingdom was governed 'not onely by Stat[ute] law, but Co[mmon] law', Burroughs said that the most important law of the common law is 'Salus Populi', a law upon which the determinations of all the courts in the kingdom must rely.¹⁸³

Responding to the royalist argument that the King 'is the Lords anointed',¹⁸⁴ Parliamentarians asserted that anointment is not a prerogative of the King alone; it is given to people as well. Stressing that 'anointing is not proper to Kings, but belongs

¹⁷⁷ Parker, *Observations upon Some of His Majesties Late Answers and Expresses*, 8.

¹⁷⁸ Ibid., 8.

¹⁷⁹ Ibid., 18.

¹⁸⁰ Ibid. CF: 'The Law of Prerogative it selfe, it is subservient to this Law [*Populi salus, suprema lex*]'. Ibid., 3.

¹⁸¹ Ibid., 2-3. 'The King is singulis major and yet universis minor, this wee see in all conditionall Princes'. Ibid., 8.

¹⁸² Ibid., 2. 'As for the finall cause of Regall Authorities, I doe not finde any thing in the Kings papers denying, that the same people is the finall [origin of the power]'.
¹⁸³ 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 1v. Also see Burroughs, *The Glorious Name of God, the Lord of Hosts*, 30.

¹⁸⁴ Ferne, *The Resolving of Conscience*, 19.

to others as well as Kings', Burroughs, quoting 1 Chronicles 16:22 and Psalm 105:15, wrote that God warned not to do harm to the anointed prophets.¹⁸⁵ Moreover, Burroughs added that not only kings but also prophets, priests, inferior magistrates, and captains could be anointed, 'as truly Gods anointed, as Kings are'.¹⁸⁶ Once individuals are anointed, they are 'of the people of God, of the Church, of the Saints', and 'God gives here a charge, that none, no not Kings should touch them to doe them any hurt'.¹⁸⁷ In addition to insisting that anointment is not a prerogative of kings, Burroughs also weakened the sacredness of the anointment of kings by showing 'the difference between Kings anointing then, as David, and Solomon, and others were, and Kings anointing now'; the former group are God's direct ordinance while the latter group are the ordinance of both God and man, i.e. 'the people first agree that such a one shall be King, [and] the Kingly power shall be in such a family successively, and then God establisheth this choise or agreement'.¹⁸⁸ In brief, those kings who were anointed now are created not by 'God's immediate choise', but 'by way of compact or covenant'.¹⁸⁹

Herbert's collection 'A Treatise on Obedience to Magistrates' (E5/3/44) also presents the idea of limited monarchy and the claim that the safety of the people precedes the King's prerogative. As discussed in section 2 of Chapter 1 above, the manuscript was written after Herbert read Bishop Bilson's work.¹⁹⁰ Echoing

¹⁸⁵ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 36. A printing error exists here. Burroughs intended to cite 1 Chronicles 16:22 – 'Touch not mine anointed, and do my prophets no harm', but it was wrongly printed as '1 Chron. 26:22'. Psalm 105:15 has the same statement with 1 Chronicles 16:22.

¹⁸⁶ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 38. CF: 'The Lords hand and oyle is upon Captains and other Magistrates' and 'Prophets, Priests have Gods hand and oyle upon them'. Burroughs, 'A Briefe Answer', 128.

¹⁸⁷ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 36.

¹⁸⁸ *Ibid.*, 38.

¹⁸⁹ *Ibid.*, 39.

¹⁹⁰ It seems that, as far as I know, royalists seldom exploit the work of Bilson, even though most of his work stressed the obedience of the subject to their sovereigns. Only the English casuist Richard Baxter cited it when arguing that by no means could the subject resist their magistrates. Baxter said 'the authority of a sinful ruler is of God, and must accordingly be obeyed: of this read Bishop Bilson at

Parliamentarians' arguments, the treatise states that 'the law of God, and Nature teacheth that being now the father of the K[ing]dome, hee is not to waste his children's Inheritance, indeed the people's right, but to preserve and uphold it'; the King is bound to protect the people's right 'at his first entrance vpo[n] the state of the K[ing]dome'.¹⁹¹ Moreover, the manuscript proposes strikingly that 'the people are more antient then the King; and for the people were kings ordained, not the people for them'.¹⁹² Furthermore, it stresses that when the King ascends the throne, he 'is taken with Covenants' to protect the people and the kingdom, and he could not 'vniversally and wilfully violate' it.¹⁹³ Similarly, Herbert's collection 'Discourse on the High Court of Parliament and the Authority of the Same' (E5/3/42) echoes the same theory of limited monarchy and maintains that the King had no arbitrary power over the kingdom: the 'acte of Parliam[en]t and statute in England are not made only by the Prince pleasure but alsoe by the assent of the whole Realme'.¹⁹⁴

5.2.2 The higher powers in Romans 13:1

In addition to the issue of the nature of the King and of people, supporters of Parliament had different interpretations of the 'higher powers' in Romans 13:1, which reads 'let every soul be subject unto the higher powers'. On the one hand, Parliamentarians distinguished between the legal power of the King's office and his personal power, maintaining that the King's legal power represents the true higher power and the regal power. On the other hand, they maintained that the higher powers

large in his excellent treatise of Churistian Subjection; against the Papists that excommunicate and depose princes whom they account heretics, or favourers of them'. Baxter, *A Christian Directory*, part IV, 15.

¹⁹¹ 'Account of "Ye Present Troubles"; and a Treatise on Obedience to Magistrates', fol. 5v.

¹⁹² Ibid., fol. 5r.

¹⁹³ Ibid., fol. 5r-5v.

¹⁹⁴ 'Discourse on the High Court of Parliament and the Authority of the Same', fol. 10r.

were not confined to kings, but included inferior governors and Parliament. Both arguments, as the following paragraphs will show, are presented by Herbert's collections, especially by 'Treatise on the Royal Prerogative' and 'A Treatise on Obedience to Magistrates'.

Differentiating between the King's legal power and his personal power, Burroughs argued in 'Treatise on the Royal Prerogative' that the differentiation is necessary since 'a man in authority may co[mma]nd what auth[ority] co[mma]nds not'.¹⁹⁵ He defined the regal power as 'that which the Lawes of the Land invest him [the King] with' – this definition also reveals that the King is under the law of the land –, and then claimed that the Long Parliament fought 'onely against his personall Co[mma]nd, not his legall power'.¹⁹⁶ Commenting on Romans 13:1, Burroughs wrote that the verses does not require us to submit 'to the wills of those who are in highest place':¹⁹⁷ rather, 'if wee be either actively or passively subject to the Lawes of that Countrey wherein we live, we fulfil the very l[ett]re of that Scrip[ture]'.¹⁹⁸ Furthermore, the King's legal power 'consist[s] not in his personall verball co[mma]nds' but 'in his Co[mma]nds by his Officers seales, and Courts of Justice' – and the highest court in the kingdom is Parliament, Burroughs added.¹⁹⁹ In brief, according to Burroughs, the personal command of the King differs from the regal power of the King, and since the Long Parliament resisted not the latter but only the former, they were not in violation of the precept of Romans 13:1.

Parliamentarians, then, claimed that they were not resisting the King since they

¹⁹⁵ 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 1r.

¹⁹⁶ Ibid.; Burroughs, *The Glorious Name of God, the Lord of Hosts*, 28. CF: 'When wee speak of a King, wee meane such a man invested with a Regall power by the Lawes, and Constitutions of that Countrey hee is the King of'. See 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 1r.

¹⁹⁷ Ibid. Also see Burroughs, *The Glorious Name of God, the Lord of Hosts*, 28.

¹⁹⁸ Ibid.; 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 1r.

¹⁹⁹ Ibid. Also see Burroughs, *The Glorious Name of God, the Lord of Hosts*, 29.

did not resist the King's legal power.²⁰⁰ Reiterating the above paragraph's argument, Burroughs added that they 'desire not that he [the King] should have lesse power then God and Laws hath given him', but instead denied that the King had 'any further power'.²⁰¹ Agreeing that Parliament and its supporters were all the King's subjects, Burroughs argued that we were bound to submit to his legal power, but not 'to his will'.²⁰² When the Long Parliament carried everything 'according to the constitution of the Government of our Kingdome', they did 'not sinne against Authority'.²⁰³ At the same time, Burroughs, agreeing with the Royalists that the abused authority should be obeyed, maintained that the Long Parliament was not resisting the abused authority of the King because of the 'differences betw[een] the Co[mma]nds that are from abused authority, and the Co[mma]nds that are from the wills of men in Authority'.²⁰⁴ If we resist the 'command out of his [the King's] own will, and not by Law', 'it is not resisting abused power, for it is resisting no power at all', he added.²⁰⁵ Burroughs explained that the abused power 'is the ill use of what is given to him', but when tyrants command out of their own wills, they commit 'abuse of their wils, but not abuse of their power'; in this kind of case, people could resist tyrants without fighting against the authority of the King.²⁰⁶ After reading Burroughs' work, Prynne agreed that the Long Parliament did not resist 'any kingly, lawfull royall Authority', but only 'these illegall oppressions, tyrannicall actions, not warranted, but prohibited

²⁰⁰ Among Royalists only Digges answered this point. He maintained that Parliamentarians were misleading the people when they differentiated between the legal power of the King and his personal power – or the authority of the King's office and the authority of the man – since the King 'joynes them together and uses them promiscuously, and in the prosecution inforces that, by mentioning the persons, which before he had attributed to the powers'. Digges, *The Vnlawfulnessse of Subjects Taking up Armes against Their Sovereigne*, 48.

²⁰¹ Burroughs, 'A Briefe Answer', 118.

²⁰² Ibid., 122.

²⁰³ Burroughs, *The Glorious Name of God, the Lord of Hosts*, 31.

²⁰⁴ 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 2r. Burroughs, *The Glorious Name of God, the Lord of Hosts*, 32.

²⁰⁵ Burroughs, 'A Briefe Answer', 113, 124.

²⁰⁶ Ibid., 124.

by the Laws of God, and the Realme'.²⁰⁷ Although Prynne implied that King Charles I, by delivering unlawful commands, 'is no lawfull King, nor Majestrate, but an unjust oppressing Tyrant, and a meere private man',²⁰⁸ he insisted that their resistance did 'neither oppose the Kings royal person, nor [his] lawfull Authority', and hence the resistance 'must certainly be lawfull in point of conscience'.²⁰⁹ Similarly, Goodwin insisted that when a king oppressed the people with an unlawful command, subjects could not only disobey it but also take up arms, though 'not properly or directly against the King'; moreover, in such a case, resisting the unlawful command of the King by force 'is not only lawfull, but even a matter of duty and obedience unto God'.²¹⁰

The 'Declaration of the Houses in Defence of the Militia Ordinance' issued on 6 June 1642 echoes the Parliamentary arguments described above. The declaration states that the King 'is the fountain of justice and protection, but the acts of justice and protection are not exercised in his own person, nor depend upon his pleasure, but by his courts and by his ministers'.²¹¹ Moreover, the jurisdiction of courts represent the authority of the King, and even the King's personal objection cannot annul them – as it states that 'if judgements should be given by them against the King's will and personal command, yet are they the King's judgements'.²¹² Furthermore, since the King's 'supreme and royal pleasure is exercised and declared in this High Court of law and council', the determination and jurisdiction of Parliament outweighs the 'personal act or resolution of his own'.²¹³

In addition to distinguishing between the legal power of the King and his

²⁰⁷ Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 3rd pt, 5.

²⁰⁸ Ibid., 3rd pt, 5.

²⁰⁹ Ibid., 3rd pt, 72.

²¹⁰ Goodwin, *Anti-Cavalierisme*, 10.

²¹¹ Gardiner, *The Constitutional Documents of the Puritan Revolution, 1625-1660*, 177.

²¹² Ibid.

²¹³ Ibid.

personal power, Parliamentarians argued that the ‘higher powers’ include not only the King, but also Parliament and other inferior governors – hence, people are also bound to obey their lawful commands. Responding to Ferne’s argument that the power of the King comes from God and that the King is an ordinance of God, Burroughs wrote that ‘we grant that the power not onely of Kings, but of all lawfull authority is Gods Ordinance’, and hence these other lawful authorities are also, like the King, higher powers.²¹⁴ Similarly, addressing Ferne’s statement that ‘the supreme Magistrate is called the Minister of God, Rom.13’, Burroughs argued that ‘this is true of inferior Magistrates as well as superiour’.²¹⁵ Parker similarly insisted that although the King is the chief member of the kingdom and the ordinance of God, he is not the only higher power since God also creates inferior magistrates as higher powers.²¹⁶ Likewise, Goodwin wrote that since ‘subordinate Authority, and inferior Magistracy and power is as much the Ordinance of God, as Sovereignty and supream Authority it selfe is’, God requires us ‘to submit ourselves to inferior Magistrates or Governours’ as we do to the King.²¹⁷

Herbert’s collection ‘A Treatise on Obedience to Magistrates’ agreed with the Parliamentarians that inferior magistrates or governors are entitled to lead the people in bridling the unlawful commands of kings. The treatise states that when a king ‘shall breake out by an vniversall force, and Tyranny vnsufferable’, inferior governors ‘were ordained to bee bridles to an ill governor, to pull him, and to hold him to the duties of his kingly place’, as the ‘the Consulls, Praetors, and other Governors of the Citty, and Presidents of the Providences of Rome’ and ‘the Elders of the people in Israell’ did

²¹⁴ Burroughs, ‘A Briefe Answer’, 126.

²¹⁵ Ibid.

²¹⁶ ‘God is no more the author of Regall, then of Aristocraticall power, nor of supream, then of subordinate command’. Parker, *Observations upon Some of His Majesties Late Answers and Expresses*, 1.

²¹⁷ Goodwin, *Anti-Cavalierisme*, 9.

before.²¹⁸ Moreover, when inferior magistrates – i.e. ‘the Dukes, Marquesses, Earles, Viscounts of this Land, who (antiently) were deputed to roomes of Authority in the state’ – bridle the unlawful commands of a tyrant, ‘they serve not the king, but the Crowne, and Countrey’.²¹⁹ Showing that tyrant’s wilful deeds could be halted, ‘A Treatise on Obedience to Magistrates’ states that the wall of a kingdom could not stand ‘if hee that is possessed of the supreme authority therein would wilfully pull it downe’.²²⁰

5.2.3 Parliament as the highest power in the kingdom

Claiming that inferior magistrates are also the ordinances of God, however, could not perfectly justify taking up arms against the King since he is, at least nominally, superior to inferior magistrates. If the King could not act as judge when in a quarrel with inferior magistrates, there would need to be a third party to judge the lawfulness of inferior magistrates’ resistance against the King. Hence, the next and the most crucial step of the Parliamentary argument was to establish that Parliament is the highest court in the kingdom and the highest power of the realm – i.e., Parliament holds sovereignty in the kingdom. By doing so Parliament is entitled to deliver its jurisdiction over everything, including the deeds of both the King and inferior magistrates.²²¹ As we will see below, Herbert’s collections E5/3/42 and E5/3/46, ‘Discourse on the High Court of Parliament’ and ‘Treatise on the Powers of King and Parliament’, make this argument strongly.

²¹⁸ ‘Account of “Ye Present Troubles”; and a Treatise on Obedience to Magistrates’, fol. 4r.

²¹⁹ Ibid.

²²⁰ Ibid., fol. 4v.

²²¹ As some scholars have pointed out, Parliament fought for its sovereignty by arguing that it is the high court in the kingdom. See Müßig, ‘Constitutional Conflicts in Seventeenth-Century England’, 1 March 2008, 27–47.

Responding to King Charles I's claim that what the Long Parliament did was against the law of the kingdom, Burroughs answered that 'when the most inferior Court of Justice determines any thinge to be Law, it is not the K[ing]'s personall dissent, and saying it is not law that disannuls it, but the judge[men]t of some superiour Court'; moreover, since Parliament is the highest court in the kingdom, 'the personall dissent of the King cannot disannul it [the determination of Parliament]'.²²² Burroughs's statement echoes his former argument that the legal power of the King differs from the personal power of the King, and that the King's office seal and courts of justice – not his personal command – represent the King's legal power. Moreover, since Parliament is where the last appeal lies, this means that 'Parliament is supreme Judges'.²²³ Sharing the same opinion, Prynne in his first part of *The Sovereigne Power of Parliaments and Kingdomes* – i.e. Herbert's collection E5/3/46, 'Discourse on the High Court of Parliament', discussed in Chapter 4 above – focused on establishing that Parliament is 'the Highest Sovereigne power of all others, and above the King himselfe'.²²⁴ When Prynne in the third part of his work justified the Long Parliament's resistance, he used the same argument: he said that the 'necessary forcible resistance which is Authorised, and Commanded by the Supreamest lawfull power and highest Sovereigne Authority in the Realme, must infallibly be just and lawfull, even in point of Conscience, by the expresse Resolution of Rom. 13'.²²⁵ Moreover, maintaining that Parliament is the highest power in the realm, Prynne

²²² 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 1v. Burroughs, *The Glorious Name of God, the Lord of Hosts*, 30.

²²³ 'When any inferiour Judge makes this determination against any party that thinks himselfe wronged, hee makes his appeale to the K[ing]'s bench, if he have not right ther[e], he hath a writ of appeale ad prox[imum] Parl[iamen]tum'. See 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power', fol. 2r. Also see Burroughs, *The Glorious Name of God, the Lord of Hosts*, 30–31. Prynne revealed the same point, see 'Treatise on the Powers of King and Parliament', fol. 3v; Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 1st pt, 93.

²²⁴ Ibid., 1st pt, 33. Concerning the structure and viewpoints of the first part of Prynne's work, see footnote 93 of Chapter 1 above.

²²⁵ Ibid., 3rd pt, 72.

argued that the King ‘is but the Parliaments and Kingdomes Publicke Royall Servant for their good’.²²⁶ Describing Parliament as the ‘great Councell of the Kingdome’ who holds ‘supreame judicature’,²²⁷ Parker wrote that Parliament represents the kingdom, and ‘sit[s] in a far higher capacite than inferior Judges doe’.²²⁸ Quoting and interpreting ‘Romans 13. 1. Wee are commanded to be subjected to the higher Powers’, Bridge said that ‘Parliament[,] being the highest court of Justice in this Kingdome[,] must needs bee the higher powers of England, though the King be supreame, yet they have the high power of declaring the law’; therefore, the subjects are bound to obey the commands of Parliament.²²⁹

That Parliament, not the King, holds the sovereignty of the kingdom is one of the main points of the ‘Discourse on the High Court of Parliament’. When speaking of ‘the soveraigne power of this high Courte of Parliament’, the Discourse stated that although the King has ‘very many great prerogatives, yet diverse thing[e]s there are, which are not effectuall in lawe, to passe by the Kinge Charter vnder the great Seale of England, but only by authority of this high Courte of Parliament’.²³⁰ Moreover, Parliament, as the best means to preserve the public safety and tranquillity, is created to protect the safety of the people. The work further argues that Parliament holds higher authority than the King because it precedes monarchy and because the King is only a part of Parliament.²³¹

By analyzing Herbert’s collections ‘A Treatise on Obedience to Magistrates’, ‘Discourse on the High Court of Parliament’, and ‘Treatise on the Royal Prerogative’

²²⁶ Ibid., 3rd pt, 73.

²²⁷ Parker, *Observations upon Some of His Majesties Late Answers and Expresses*, 28.

²²⁸ Ibid., 9.

²²⁹ Bridge, *The Wounded Conscience Cured*, 3. CF: ‘It is the highest Court of Justice in the Kingdome’. Ibid., 6.

²³⁰ ‘Discourse on the High Court of Parliament and the Authority of the Same’, fol. 30r.

²³¹ Ibid., fol. 27v.

(E5/3/44, E5/3/46, and E5/3/49, respectively), this section has shown that he was very likely to agree with the Parliamentarians' argument: Parliament or inferior magistrates could lawfully lead the people to resist a tyrant. These manuscripts must have been collected by Herbert in the 1640s, and their viewpoints not only support the main argument of Chapter 4 above that Herbert had a strong interest in Parliament's authority,²³² but also reflect his agreement with Parliamentarians on the legitimacy of lawful resistance against a tyrant. Moreover, among Herbert's other political collections, no manuscript belongs to the writings of the Royalists, implying that Herbert was not interested in their cause. Again, as discussed in the second section of Chapter 1 above, it is worth noting that although another manuscript in Herbert's collection – 'Notes on the King, Parliament and the Civil War' (E5/3/45), composed during the English Civil War by an anonymous author – argued that the English Civil War would not bring happiness to the Common Wealth, its existence in Herbert's collection does not in any way contradict the argument of this chapter. It only reveals that Herbert was aware of the viewpoints of those moderators who disagreed with the value of the Civil War.

Transcribed from Prynne's first part of *The Sovereigne Power of Parliaments and Kingdomes* and from Burroughs' *The Glorious Name of God, the Lord of Hosts* respectively, 'Treatise on the Powers of King and Parliament' (E5/3/46) and 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5/3/49) belong to the classical works of Parliamentarians. Also supporting Parliamentarians' arguments, 'A Treatise on Obedience to Magistrates' (E5-3-44) is a reflection written by Herbert after he read Bilson's *The True Difference Betweene Christian Subiection and Unchristian Rebellion*. Like the English casuists and Royalists, the authors of

²³² Part of chapter four's arguments was based on Herbert's other collections E5/3/30, E5/3/34, E5/3/35, E5/3/36, E5/3/41 and E5/3/42. They and the manuscripts used in chapter 5 all suggest that Herbert was interested and believed in the authority of Parliament.

these three manuscripts used moral principles derived from nature, Scripture, and human laws. They agreed with the Royalists on several points: that the people could disobey the unlawful commands of the King, that the King's abuse of a law does not justify the people in taking up arms, and that private men by no means could take up arms against the King's very person. Nonetheless, showing the main arguments of Parliament's side, these three manuscripts resolved that conscience agrees that a tyrant could be resisted by the people. Citing cases in 1 Samuel, 'A Treatise on Obedience to Magistrates' maintains that when a king becomes a tyrant and goes against the well-being of the whole kingdom, the nobles and inferior magistrates could lead the people to resist his tyranny. It further states that the safety of the people precedes the prerogatives of the King, since 'the people are more antient then the King; and for the people were kings ordained, not the people for them'. 'Treatise on the Powers of King and Parliament' argues that Parliament and the people could resist a tyrant, since Parliament holds the highest sovereignty and it is the demand of the conscience to obey the highest power. Differentiating between the King's legal power and his personal power, 'Treatise on the Royal Prerogative' asserts that resisting a tyrant does not equate to resisting the regal power; it only resists against the tyrant's personal command. Like 'A Treatise on Obedience to Magistrates', 'Treatise on the Royal Prerogative' insists that Parliament and inferior magistrates, like kings, are higher powers, and are trusted by the people to protect the safety of them. Hence, when a king becomes a tyrant, people have both the right and the responsibility to resist, though they are not entitled to do harm to the King's very person. The above three manuscripts strongly suggest that Herbert agreed with the Parliamentarians' argument: conscience grants that the people could resist a tyrant.

Chapter 6: Conclusion

This thesis has shown that Herbert's views on contemporary matters of religion and politics reflected his emphasis on the freedom and authority of individual conscience. Chapter 2 provides Herbert's theory of conscience, which forms the basis of the following chapters. According to him, conscience is founded in the universal providence, a faculty ingrained by God in the mind of every human being. The supreme guide to an individual's actions, conscience is 'a guardian of divine justice' and 'the court of God'.¹ Moreover, the satisfaction of conscience is necessary for obtaining salvation and eternal blessedness,² and the authority of conscience is higher than those of other worldly institutions, including the authority of a king. By focusing on Herbert's views of contemporary issues, Chapters 3, 4, and 5 echo Herbert's theory and his concern for the satisfaction of individual conscience. Chapter 3 argues that Herbert supported the royal supremacy against the papal supremacy, since he believed that the former could protect individual conscience from the corruption of popes. It also shows that in his view the royal supremacy must not interfere with the freedom of individual conscience. In *The Life and Raigne of King Henry the Eighth*, Herbert expressed his sympathy for those martyrs who refused to accept the king's supremacy on grounds of conscience, among whom Thomas More was the best example. Moreover, Herbert delivered his open objection to the Six Articles enacted by the name of the royal supremacy, since he thought that it was harmful to the liberty of conscience.³ Chapter 4 argues that in Herbert's view the safety and liberty of the people precede the prerogatives of the crown, and that Parliament, as the highest court

¹ *DV*, 185.

² Conscience is where 'the great contract of salvation is expressed and eternal blessedness assured'. Herbert, 184.

³ *L&R*, 447-48.

in the kingdom, could best protect the people's consciences from oppression by the King's unlawful commands. Chapter 5 reveals Herbert's concern for the moral dilemmas of the people during the early English Civil War, particularly whether they could lawfully resist a tyrant. Herbert's manuscript collections strongly suggest that his answer was positive, and that conscience grants that a tyrant's misdeeds could be resisted.

Broadening the scope of the research on Herbert is the first main contribution of this thesis. As mentioned in the literature survey in Chapter 1, he has been labelled 'the father of English deism' since the mid eighteenth century, and modern research has devoted much effort to his philosophical and religious thought, especially the five religious common notions. However, this thesis sets aside this label and focuses on the connection between his thought and his historical context. It does so largely through an analysis of 'On the King's Supremacy in the Church', *The Life and Raigne of King Henry the Eighth*, and Herbert's collection currently deposited in the National Library of Wales, all of which have rarely been examined by scholars. Herbert's historical works have been neglected and underestimated for quite a long time, and Sir Sidney Lee's influential edition of Herbert's autobiography, as Chapter 1 indicates, provided an unfair evaluation on them. By discussing Herbert's views on the royal supremacy, the relationship between the King and Parliament, and the issue of resistance to tyrants during the early English Civil War, this thesis widens the research on Herbert and balances modern studies' disproportionate attention to Herbert's religious thought.

This thesis shows that Herbert's thought needs to be understood in its early-seventeenth-century political context; placing Herbert in that context results in a different and more complete understanding of him than that offered by his reputation

as a forerunner of eighteenth-century deistical thought.⁴ Herbert was concerned with the individual conscience, which was a very important topic of the seventeenth century, or, the ‘age of conscience’. In this era, many people were afflicted by many moral dilemmas, struggling between their public duties and private consciences, between taking the oaths of allegiance to royal supremacy and retaining their religious stances, and between accepting the prescribed teachings of national churches and retaining their religious beliefs. As discussed in Chapter 3, Herbert met with similar moral dilemmas when writing ‘On the King’s Supremacy in the Church’ and *The Life and Raigne*. On the one hand, he should take King Charles’s intentions into consideration, while on the other hand he intended to retain his own judgements based on conscience. Similarly, Herbert experienced the conflict between his public duty and his private conscience during the English Civil War, when each side called on the people to take up arms for the kingdom. In addition to showing that Herbert was deeply involved in the issues of conscience in this century, Chapters 3, 4, and 5 provide detailed arguments regarding the connection between Herbert’s thought and that of his contemporaries. Chapter 2 reveals that he shared many viewpoints with the English casuists on the theory of conscience, including the definition of conscience and its authority. Chapter 3 shows that Herbert, when arguing for the royal supremacy against the papal supremacy, provided the same reasons as those in the Act in Restraint of Appeals (1533). Moreover, Herbert’s view of the King’s power over the Church fitted that of his contemporaries: supremacy was a jurisdictional rather than a sacerdotal matter. Chapter 4 and Chapter 5 argue that Herbert shared an interest in Parliament and its authority with many Parliamentarians, and that he agreed with

⁴ Diego Lucci, *Scripture and Deism: The Biblical Criticism of the Eighteenth-Century British Deists* (Bern; New York: Peter Lang, 2008), 23–30; Justin Champion, ‘Deism’, in *The Columbia History of Western Philosophy*, ed. Richard Henry Popkin and Stephen F. Brown (Columbia University Press, 2005), 437.

them that Parliament could best protect the liberty and safety of the people and save their consciences from moral dilemmas. By revealing Herbert's theory of conscience and his emphasis on the freedom of individual conscience, this thesis also challenges the assumption that his theory of common notions represents the whole picture of his thought.⁵

It is worth noting that to say Herbert's thought belonged to the seventeenth century and shared many ideas with his contemporaries does not deny the fact that his thought had its characteristics and contributed to seventeenth-century intellectual history. Although his theory of common notions did not constitute the whole picture of his philosophical thought, common notions play a prominent role in his theory of truth. Although the idea of the common notions was shared by contemporaries such as Robert Sanderson, for Herbert they were absolutely essential as not only the most reliable source of moral principles, but also the most solid truths human beings can rely on – without the common notions people 'should never come to distinguish between things, or to grasp any general nature'.⁶ Although Herbert acknowledged the existence and importance of grace or particular providence, the role of grace was diminished and that of common notions or universal providence enlarged. In brief, the prominent role of the common notions still forms a characteristic of Herbert's theory of truth. Herbert's thought had its contemporary influence. His *De Veritate* was commented on by more than a dozen scholars in his own time, including René Descartes and Thomas Hobbes.⁷ His *The Life and Raigne* retained its influence after its publication,⁸ and it was only when Herbert obtained his well-known title as the

⁵ See section 1.1 above.

⁶ *DV*, 105. For more detailed argument, see Chapter 2 above.

⁷ R. W Serjeantson, 'Herbert of Cherbury before Deism: The Early Reception of the *De Veritate*', *The Seventeenth Century* 16 (2001): 219–20.

⁸ James Granger stated that 'Lord Herbert stands in the first rank of the public ministers, historians, and philosophers, of his age'. See James Granger, *A Biographical History of England, from Egbert the Great to the Revolution*, vol. 2, 319. William Nicolson (1655-1727) said that Herbert 'may be truly said

father of English deism that its good reputation started to diminish.⁹

The second main contribution of this thesis is to better unify Herbert's *De Veritate*, his religious treatises, and his historical works. It provides a more comprehensive and coherent picture of Herbert's thought. Chapter 2 has shown that studies that focus only on Herbert's five religious common notions are prone to cause fallacy, since, according to Herbert, common notions are not themselves sufficient and truths could only be obtained by the guidance of both common notions and grace, or universal providence and particular providence. As Herbert stated in the preface of *De Veritate*, his theory was the product of both.¹⁰ Similarly, in Herbert's theory of conscience, only by following the guidance of both common notions and grace could an individual achieve the satisfaction of conscience. The above argument also points out that some scholars, such as Horace Walpole and Sir Sidney Lee, mistakenly thought that Herbert contradicted his theory of common notions because he recorded a personal experience of receiving the divine imprimatur of *De Veritate* in the end of his *Autobiography*.¹¹ In fact, Herbert's experience of receiving grace did not contradict his theory, but was a presentation of it.

The fundamental connection between Herbert's works of philosophy, religion, and history is his theory of truth. This thesis has demonstrated that Herbert's theory not only applied to religion, giving birth to the five religious common notions, but also applied to his historical work *The Life and Raigne* and to his theory of conscience.¹² In his history of King Henry VIII, Herbert used his theory to argue that

to have written the Life and Reign of King Henry the Eighth; having acquitted himself with the like Reputation as the Lord-Chancellor Bacon gain'd by that of Henry the Seventh'. See William Nicolson, *The English Historical Library* (London: Printed for Abel Swall and T. Child, at the Unicorn, in St. Paul's Church-Yard, 1696), 226.

⁹ For those who denounced Herbert as a deist, *The Life and Raigne of King Henry the Eighth* was not a good work. See Charles Mills' comment in section 1.1.

¹⁰ *DV*, 77. For more detailed information, see chapter 2.

¹¹ See section 2.2.

¹² As mentioned in the end of section 3.1, Sorley held that Herbert only applied the theory of common

every human being will in principle agree with the royal supremacy, not the papal supremacy. In his theory of conscience, common notions form the most reliable source of moral principles, and a troubled conscience, according to Herbert, should seek help from both the common notions and grace.

The common concern of Herbert's works of philosophy, religion, and history, considered alongside his collections of religion and politics, is with solving the moral dilemmas faced by the people in the first half of the seventeenth century. *De Veritate* aims to save the consciences of the people from deceptive words and oppressions of religious sects or 'the cunning authorities', and his five religious common notions have the same goal.¹³ Likewise, Herbert's *De Religione Laici*, *De Religione Gentilium*, and *A Dialogue Between a Tutor and His Pupil* intend to search for the best religion for the laymen, so that their consciences could be free from sectarian strife and 'the terrors of divers churches militant throughout the world'.¹⁴ Herbert's historical works also reveal that the peace of the people's consciences supercedes the royal supremacy. Aiming to save the people from any invention of the religious articles, Herbert in 'On the King's Supremacy in the Church' stresses that kings should not assume sacerdotal powers and that neither the King nor clergymen could change the foundation of religion.¹⁵ Echoing the same idea, Herbert in *The Life and Raigne* disagreed with the executions of those who refused to accept the royal supremacy on grounds of conscience. As he wrote, conscience should be persuaded, not forced. Likewise, Herbert's political collections, again, show that he was in favour of Parliament's sovereignty, since he believed that it could save the people from the moral dilemmas caused by the unlawful commands of the King.

notions to religion. Sorley, 'The Philosophy of Herbert of Cherbury', 506.

¹³ *DV*, 73, 290.

¹⁴ *DV*, 87; *DRG*, 51-54; *Dialogue*, esp. 1-5.

¹⁵ See section 3.3.

A topic worth further researching is Herbert's attitude towards King Henry VIII presented in *The Life and Raigne*. As mentioned in Chapter 1 above, scholars have different opinions on this issue: Horace Walpole and James Granger commented that Herbert palliated Henry's tyrannical deeds, while Mario Rossi, W. Merchant, and Eugene Hill held that Herbert described Henry with irony. However, none of the above scholars provide detailed analysis. When Chapter 3 argues that Herbert displayed limited support for Henry's royal supremacy, it touches this unresolved but very interesting topic. Chapter 3 reveals that Herbert had two levels of description when writing the Henrician Reformation: in the first level, Herbert defended Henry's policies in many cases, while in the second level he showed his disapproval of some policies of Henry, such as the Six Articles, and revealed his sympathy for some of those executed, such as Thomas More. Herbert's descriptions of Henry are careful and nuanced, and a more comprehensive study is worth carrying out in the future.

This thesis hopes to show that examining Herbert exclusively in the context of the deistical controversy in the eighteenth century is anachronistic and incomplete. As mentioned, Herbert's thought belonged to the seventeenth century, not the eighteenth. Moreover, separating his five religious common notions – often regarded as tenets of deism – from his theory of truth distorts his theory and obfuscates his original intention. Chapter 3 has demonstrated that no controversy arose when his theory of common notions was applied to the issue of the royal supremacy, implying that his theory of common notions was not itself religiously subversive, which is contrary to the statements of those who accused Herbert of intending to subvert Christianity. Similarly, Herbert's theory of conscience, derived from his theory of truth, caused no obvious objection. The above applications, in fact, echo Herbert's irenic intention; that is, he was searching for universally accepted truths to allow people to navigate moral dilemmas with clear consciences.

This thesis not only points out that modern scholars' understandings of Herbert's aims is incomplete, but also seeks to fill that gap in the scholarship. Other researchers have grasped portions of Herbert's intention without realising that the common idea of Herbert's works is to save the people from contemporary moral dilemmas. Focusing on Herbert's five religious common notions, Pailin argues that Herbert aimed to save people from the abuse of clergymen.¹⁶ After examining *De Veritate*, Butler held that it 'is an eirenic religious treatise as much, if not more, than it is an epistemological work.'¹⁷ Similarly, Johnson concentrates on *De Veritate*, especially its five religious common notions, and maintains that they were the response to the contemporary religious strife.¹⁸ This thesis agrees with their efforts to reexamine Herbert's *De Veritate* and to separate Herbert's thought from the deistical controversy in the eighteenth century. However, their descriptions of the intention of Herbert's writing are incomplete, since they did not consider Herbert's other religious treatises, his historical works, or his views on matters of religion and politics. By unifying Herbert's works of philosophy, religion, history, and his private collections, this thesis shows that Herbert aimed to solve the people's moral dilemmas, including those caused by religious wars, oppressions of clergymen and religious sects, the royal supremacy, the prerogatives of the King, and the English Civil War. In brief, the common concern of Herbert's works is the freedom and authority of individual conscience.

¹⁶ Pailin, 'Should Herbert of Cherbury Be Regarded as a "Deist"?', 132.

¹⁷ Butler, *Lord Herbert of Chirbury (1582-1648): An Intellectual Biography*, 173.

¹⁸ Johnson, *Peacemaking and Religious Violence: From Thomas Aquinas to Thomas Jefferson*, 195-96.

Appendix

This appendix consists of two parts. Part I contains new transcriptions of four manuscripts from Herbert's manuscripts of religion and politics deposited in the National Library of Wales: 'A Treatise on Obedience to Magistrates' (part of E5/3/44), 'Notes on the King, Parliament and the Civil War' (E5/3/45), 'Treatise on the Powers of King and Parliament' (E5/3/46) – especially including another part of E5/3/46 misplaced in the manuscript E5/3/21, 'Mr St John's Speech in the Upper House of Parliament 1641, January 14' –,¹ and 'Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power' (E5/3/49). These manuscripts are used in Chapters 4 and 5. Although much of this material was previously transcribed by Mario M. Rossi in the 1940s, there remains room for improvement, including some obscure words and abbreviations and one incomplete transcription (E5/3/45). Furthermore, having identified the texts which provide the bases of E5/3/46 and E5/3/49, I am in a position to provide a more accurate transcription of these manuscripts and to decode some particular conventions of the copyist.² Where my transcription diverges from Rossi's, I have provided his transcription in the footnotes. Finally, a photograph is included for each manuscript, to illustrate the hand used and the physical condition of the manuscript.

Part II is a transcription of a letter from Herbert to Rouse, a Bodleian Librarian, conserved in the opening of MS. Bodl. 910, the second version of the surviving manuscripts of *The Life and Raigne of King Henry the Eighth*.

¹ I discovered this issue in the summer of 2016, and reported it to a librarian when I visited the Library the next year.

² See my transcription of E5/3/46 and E5/3/49 for the illustration of this usage.

Part I

E5/3/44: Account of 'ye present troubles'; and a Treatise on Obedience to Magistrates

As explained in chapter 1, this manuscript contains two parts. The first part is entitled 'A Short Narration of Occurrences in the Kingdom of Scotland, and of the Present Troubles, Together with Their Causes, and Progression', and is written in 2 folios. However, the second folio has been misplaced and the content is different from the transcription provided by Rossi in the 1940s; I reported this problem to the National Library of Wales on 23 July 2016. The following transcription encompasses the second part of this manuscript, beginning with folio 3.

fol. 3r

Questions Touching vpon Obedience to Magistrates in Eminency

Quest[ion]

What if Princes become Tyrants, are they then to bee obeyed?

Answ[er]

They are by Private Persons, though they should become as wolves in the evening. Servants must so obey their M[aste]rs.³ 1 P[e]t[er] 2:18 Private Persons therefore much more their Soveraine.⁴ No Private Person is warranted to lay his Hand vpon the Lords anointed, or to make Publique talke of his faults. The golden scepter hath not called every man to speake in such a case, except to God on his knees.⁵

Q[uestion]

But what if a Prince shall sett himselfe professedly ag[ains]t the whole k[ing]dome,⁶ at least the greater part thereof, with the old Nobility, and Gentry of the same to cast them out of the Land, and to send the gospell after them; what should bee

³ CF: 'They are by Private Persons, though they should become *slaves as* Servants must so obey their M^{rs}'. Italics are by Rossi. When Rossi thought the specific word was too obscure to transcribe and he provided a word of his own, he used italics. See Mario M. Rossi, *La vita, le opere, i tempi di Edoardo Herbert di Chirbury* (Firenze: G.C. Sansoni, 1947), vols 3, 493.

⁴ 1 Peter 2:18 reads 'Servants, be subject to your masters with all fear; not only to the good and gentle, but also to the froward'. I am indebted to Dr. Felicity Green on help decipher this very implicit abbreviation.

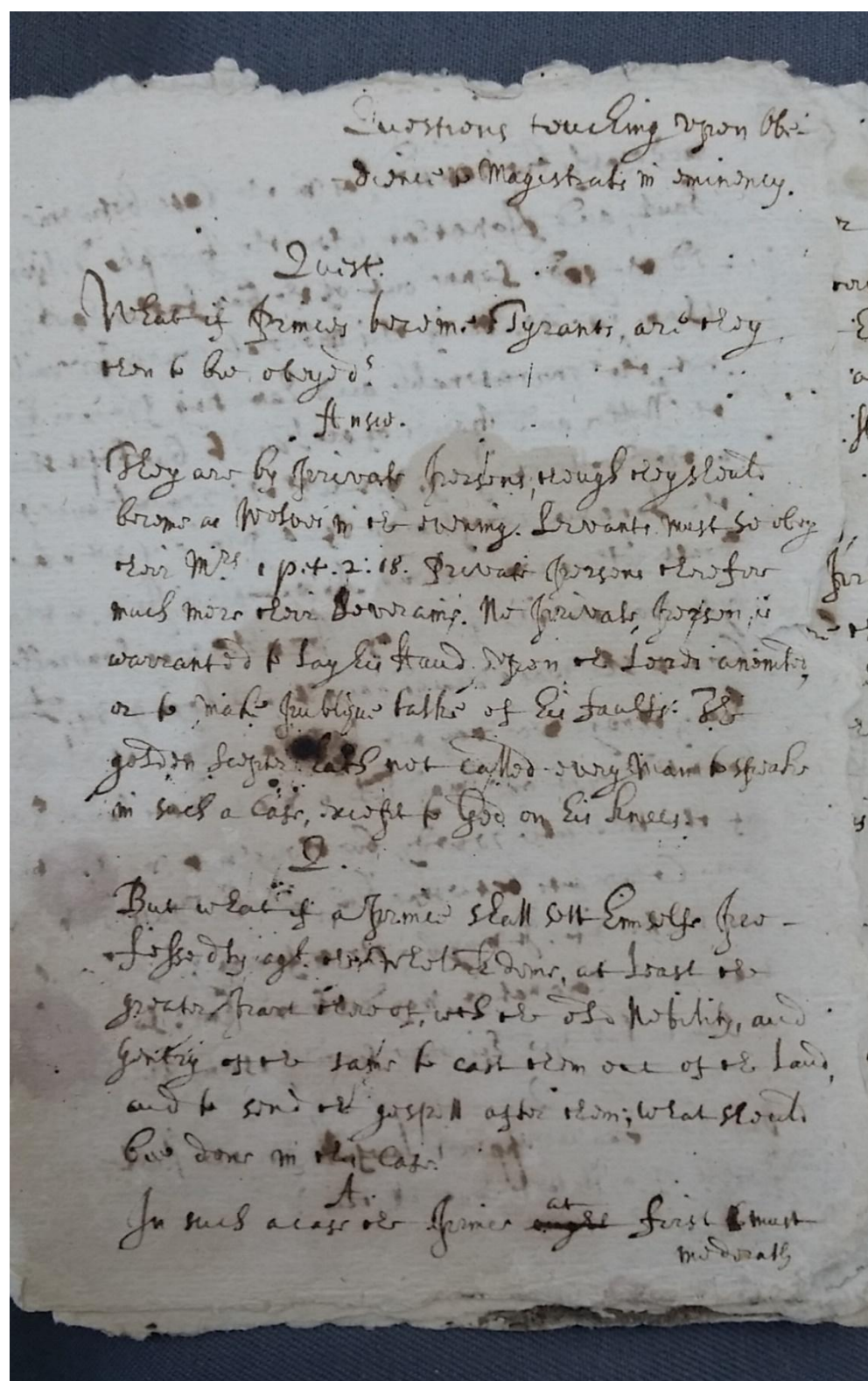
⁵ CF: 'The golden scepter has not called every man to speake in such a case *but as* to God on his knees'. Ibid., vols 3, 493. 'but as' should be 'except'.

⁶ CF: 'But what if a Prince shall sett himself *to destroy the Kingdom*'. Ibid., vols 3, 493. '*to destroy the Kingdom*' should be 'professedly ag[ains]t'.

done in this case?

A[nswer]

in such a case the Prince at first must moderately



fol. 3v

moderately bee resisted, as in the Case betweene Saul, and Jonathan, when the people delivered the good sonne out of the bad father's hands. 1 Sam[uel] 14. 45. or if this moderate course prevaile not the vnreasonable and have king prince is by the Nobles, and Peeres of the land to bee kept short, as the wolfe of prey; yet with this remembrance, that the sanguine complexion of a Prince is not to bee dealt with as com[m]on blood. An example is Jehu, in whose eyes even the vile person of Jezebel was honorable because she was a king's daughter.⁷ 2 Kings 9. 34. And heere, though one may not lay hands vpon the Lords anointed, yet one may hold a mad man's hand.⁸ But if this tollerable remedy, bee thought to[o] much, or please not; Covenante between him, and his Vassalls must bee lookt into. It may bee the infringing of his oath taken at his Coronation, may dethrone him; so may hee as Saul fall vpo[n] his owne sword. 1 Samuel 31. 4.

Q[uestion]

But how can it appeare lawfull for the Nobles, and Peeres of a state to doe all this?

fol. 4r

A[nswer]

Those by their first Justification, and proper place were ordained to bee bridles to an ill governor,⁹ to pull¹⁰ him, and to hold him to the duties of his kingly place, when he shall breake¹¹ out by an vniversall forces, and Tyranny vnsufferable. For in such cases, they serve not the king, but the Crowne, and Countrey. Such were the Consulls, Praetors, and other Governors of the Citty, and Presidents of the Providences of Rome. Such were the Rulers of the Tribes, the Captaines of thousands of hundred, of fifties, of tennes. And such the Elders¹² of the people in Israell. Further, and such ones were the Dukes, Marquesses, Earles, Viscounts of this Land, who (antiently) were deputed

⁷ CF: 'An example in Josia in which — the vile person of Jezeble was honorable because she was a kings daughter'. Rossi, *La vita*, vols 3, 493. 'Josia' should be 'Jehu'. Moreover, if we consider the content of 2 Kings 9:34, it was Jehu that commented Jezeble in this way.

⁸ CF: 'yet one may held away mans hand'. Ibid.

⁹ CF: 'and proper place were ordained to bee *enemies* to an ill governor'. Ibid., vols 3, 494. '*enemies*' should be 'bridles'.

¹⁰ CF: '*restrain*'. Ibid.

¹¹ CF: 'breache'. Ibid.

¹² CF: '*leaders*'. Ibid.

to roomes of Authority in the state, though now changed¹³ into Dignities¹⁴ that run in inheritance, but what this against, and to any impeach[men]t of their first and antient powers? And now since it appeareth that there is such a Correspondence between a king, and other governors of the state, it is manifest that the reins¹⁵ are not (all) in his sole hand, neither the whole regiment, but the chief place, or [Soueraign]

fol. 4v

Soueraign com[mand]¹⁶ and onely, and that therefore the offending king may bee pulled in of the other officers of state, joyned with Him, though in an inferior Com[m]ission. And therefore as they in fault are to bee chastised by the king, so the king so deadly offending (as was said) is by the said subjoynd authority to bee delt with, curbed, and pulled in, and what doubt but that such subordinates with the Countrey is to them com[m]itted, may and ought to stay the —¹⁷ king though it should be by armes. Else how should the wall of a k[ing]dome stand if hee that is possessed of the supreme authority therein would wilfully pull it downe.¹⁸ In this case the Peeres are to deliver the land to which they are sworne, and not the king onely.

Q[uestion]

But what one example have you for this?

A[nswer]

David after king then a subject under Saull defended himselfe, and the companies with him in armes, when there was no other remedy. Yet so as that hee would not lay a hand vpon the king, though having him twice in his power. Now shall wee say that David by this did rebell

fol. 5r

rebell ag[ains]t Saul? Wise Abigail saith that (for all this) hee fought the Lords battells. 1 Samuel 25. 21.

¹³ CF: 'have gone'. Rossi, *La vita*, vols 3, 494.

¹⁴ CF: 'Disuetude'. Ibid.

¹⁵ CF: '*powers*'. Ibid.

¹⁶ The word is obscure. It looks like 'com' with an abbreviation signal. Rossi replaced it with another word '*power*'. Ibid.

¹⁷ Rossi left this word blank. Ibid. It seems to be 'haveking'.

¹⁸ CF: 'Also where should the — of a Kdome stand if hee that is possessed of the supreme authority therein would wilfully pull it downe'. Ibid.

Q[uestion]

But what warrant for such as are private persons to follow such leaders, and in such a case?

Answer

The Comandement of their Leaders, and the —¹⁹ necessity doe in such manner of arming give them a sufficient calling;²⁰ Their Leaders now standing as Protectors, and defenders of the just Rights of a K[ing]dome, and professing onely to keepe the King in his duty whiles²¹ hee goes about and resolves to depopulate the states by insufferable Anarchie. For heere the people are more antient then the King; and for the people were kings ordained, not the people for them. Nor is any made King (I speake not of any²² coming in by conquest) but hee is taken²³ with Covenants, and vpo[n] his keeping to them²⁴ received: which if

fol. 5v

vniversally and wilfully violated, have not they power who conferred the authority, to take it away againe. Ob[jection:] You will say that in Imperio firmato, the Crowns comes by discent and runs in blood to the next heire, and how²⁵ then can hee bee said vpo[n] Covenants to come in? An[swer:] I say his succession doth not take away the originall conditions vpon which all crowns are sett on, and which is entayled to the Crowne, as the Crown to him. The law of God, and Nature teacheth that being now the father of the K[ing]dome, hee is not to waste his children's Inheritance, indeed the people's right, but to preserve and uphold it.²⁶ Which being so, is it not reason, and conscience, hee should be taken bound to such a matter at his first entrance vpo[n] the state of the K[ing]dome. Or shall hee thinke Jezebels lawless speech a good Text:²⁷ Doth thou now govern the K[ing]dome of Israell. 1 Kings 21. 7. That is what their²⁸ King, and not able to com[m]and and what thou wilt?

¹⁹ The word is obscure, but looks like 'protect'.

²⁰ CF: 'The Comandement of their Leaders, and the *liege right* doe in such manner of arming give them a sufficient calling'. Rossi, *La vita*, vols 3, 494.

²¹ CF: 'whether'. Ibid.

²² CF: 'their'. Ibid.

²³ CF: 'subiect'. Ibid. 'Subiect' here makes no sense since he is king with covenant not a subject with a covenant.

²⁴ CF: 'those'. Ibid.

²⁵ CF: 'here'. Ibid.

²⁶ CF: 'hee is not to waste his childerns Inheritance, *that is* the popular right, but to preserve & enforce it'. Ibid., 495. 'that is' should be 'indeed' and 'popular right' does not make sense, and 'enforce' should be 'vphold'.

²⁷ CF: 'Or shall hee — Jezabels — speech a good —:'. Rossi missed many words here.

²⁸ An obscure word here. CF: 'thou'. Ibid.

fol. 6r

And to doe what pleaseth thee? The K[ing]dome was borne for thee, not thou for it.

Read B[isho]p Bilson of the true difference
between Xian²⁹ Subjection, and vxian Re-
bellion the 3rd p[ar]t and 16 leaves before the end.
the booke in octavo, —. ³⁰ fol. in 4.

²⁹ i. e. Christian.

³⁰ An obscure word. It seems to be 'froer'. Rossi left it blank.

E5-3-45: 'Notes on the King, Parliament and the Civil War'

fol. 1r

The Moderator endeavours to prove that the decision by the sword, hath, and will bee destructive to vs: which hee saies, will appeare fro[m] the first overtures of it, and in euery thinge that hath happened since.

The putting the Militia, the Navy, and the Ports into new hands begate Jealousy in the Head, which divided it fro[m] the members, and the members amongst themselves. The Parl[iamen]t (the Genius of the state) being thus poysond³¹ with Jealousy, it subtilly mingled itselke with euery County as deriving it from their Representatives.

Heere saith hee, the people might take the first notice of the Contestation; Then followed the invective Declarations on both sides; which heightened the quarrell and invited the amused people to lay aside their peace, and shew themselves on one side. The Gentry who were removed fro[m] their Commands in their County grew opposite to the Parliamentary proceedings: and the Com[mon] people (according to your reason) discours[e]d

fol. 1v

discours[e]d themselves into a resolute conceit of things, which (as their passions, and humours led them) they have all this while prosecuted.

The subjects being now stirred, and divided; the great Gamesters of the State goe higher; The more active of the Parl[iamen]t are accused by the K[ing] of Treason: The K[ing's] Advisers are impeached by the Parl[iamen]t for Traitors: So that it is time that they bee further asunder: for distance affords many advantages to worke a designe higher, or else maybe a means to compose those differences, which are still renewing whilst the Antagonists are together. The K[ing] therefore removes Northwd³² to gaine³³ a Party to ballance those who[m] already hee accounts his enemies.

Thus the Scene begins to alter; and in stead of reforming (the proper worke of a Parl[iamen]t) wee shall see it busied, and always puzzled in saving (for so they call it) a distressed Church, and State; And from henceforth wee must looke on it as a Councell of Warre, and must not expect to finde it punctuall in the observance of any

³¹ i. e. poisoned.

³² Northwd got an abbreviation signal in the end, probably it should be read 'Northw[ar]d'.

³³ CF: 'have'. Rossi, *La vita*, vols 3, 500.

E 5/3/45

The Moderator endeavours to move
that y^e. Division by y^e. Lord, Earl, & will
be destructive to us: w^{ch} he said, will ap-
-pear to y^e. first overtures of it, & in duty,
thence y^e. Earl happened in.

The putting y^e. Militia, y^e. Navy, and
y^e. Ports into new hands begat Jealousy in y^e.
Head, well dividd it into y^e. Members, and
y^e. Members amongst themselves. The Parlt^{mt}
being y^e. Genius of y^e. State, being thus
possessed wth Jealousy, it subtilly mingled
itself wth duty, & driving it from
their Representatives.

These said he, y^e. people might take
y^e. first notice of y^e. Contagion; then
followed y^e. insidious Declaration on
one side; well heightened y^e. quarrell and
excited y^e. amazed people to lay aside
their fears, and shew themselves on one
side. The Gentry who were removed from
their Commands in their County ^{grew} opponents
to y^e. Parliamentary proceedings: and the
Com^{ms}. people (according to y^e. reason)
disowned

used

fol. 2r

any fixed Law: but that com[m]on Law called Salus Populi must bee produced as a g[ene]rall warrant for all their vndertakings: and that Statute Law enacted euen by nature itselfe called Lex necessitatis, must be made to iustifie all manner of severity, and violence.

The most eminent discouery of this warre which openly offred itselfe for the consideration of the people, was that great contention about the towne of Hull; and although it cost not much bloud, yet was it made an occasion to engage³⁴ the businesse very farre. The warre was sooner seen to the people then the reason of it; and though they could not define what the quarrell was, yet they begin to finde that they must end it, and feele the effects of it. And to startle them that more, their³⁵ doubts are nourished and increased by the well-penned papers fro[m] the North; and in a few moneths are persuaded to vnbelieve that which the actions, and the sense of many years before had almost confirmed in them. Thus, the King perceives, that to defend the property, and liberty of his subjects (though but with the shadow of them) with promises, and protestations, catches the affections of his credulous people, and almost

fol. 2v

almost recovers, and fixes them in their obedience. How much then will they bee his, when those promised blessings shall bee theirs in earnest?

And what advantage have wee had by any thinge hath yet bene acted by the sword? What present reparation, or what likely hopes &c.

Hee layes downe this Conclusion g^o,³⁶ That a peace warily concluded by an accommodation must be the happiest issue that can be given to these differences.³⁷

Hre (says hee) I settled myselfe in this opinion, I inquired out all the conveniences, and inconveniences that warre, or peace may beget, to see which weigh heaviest by such considerations in these.

First, what probably this warre aimes at. In this conjecture, (saith hee) it will befit vs to be very modest, and rather to thinke, then speake out; Not inquiring what alliance (in the birth of it) there is betwixt this, and that which the Scotts; Nor whether

³⁴ CF: 'ingage'. Rossi, *La vita*, vols 3, 500.

³⁵ CF: 'theyr'. Ibid.

³⁶ Rossi transcribed it as 'yⁿ', but it clearly was 'g^o' which, as I have shown in E5/3/46 and E5/3/49, means 'ergo' and 'therefore'.

³⁷ Rossi's transcription skipped the following paragraphs and folios until folio 5v. See Ibid.

the Prerogative com[m]enced it, to protect itselfe ag[ains]t an invading power, which seemed to threaten it (as some would have it) or to perfect the designe

fol. 3r

designe of many yeares before, to bee absolute in of the people, (as others conceive) or whether the Parl[iamen]t began it to secure themselves, and fetch in delinq[uen]ts, (as wee are bid believe) or to confirme that by the sword, which no other assurances could euer make good vnto them; and to bring the gouernm[en]t somew[ha]t neere to an Aristocracy, (as some have suggested) or whether indeed the reason of the warre bee a miscellany of all these. But how justifiable, how necessary, and on which side this warre was defensive, or offensive, I shall not (saith hee) vndertake to debate, or determine. Dangerous misteries, not to bee pried into. It wilbe enough for vs to inquire how farre it tends to the g[ene]rall good, by what hath already happened, and what must happen in the prosecutio[n] of it.

It is confessed (though not agreed on) by both Armies, that our Religio[n], lawes, &c. ly at the stake, and that they weare their swords to defend these: and that this cannot be safe, vnlesse one of them prove victorious.

Thus our Cause is much like a riddle; It were surely better for vs, to have it understood by the deliberatio[n], and wisdom of a parley, then by such means as Alexander vsed

fol. 3v

vsed to vnty³⁸ the Gordian knott, that violence of the sword. If Religion bee the principall reason, how few hopes haue wee to see it rectified by Warre, the nurse of barbarisme &c. Religion is a child of peace. &c.

It may happen otherwise (some have thought) if the designe bee advisedly laid, and so vigorously prosecuted, that the execut[i]on of it shalbe suddaine.

But suppose the Parl[iamen]t Conquer; a good reformation is very doubtfull: Successe may somew[ha]t heighten their religious designes, and suggest such things as duty —³⁹ which before, their very imagination durst not reach at. &c. Then it is likely neither roote, nor branch of our old Church-order shalbe left, nor any signe where it grew: And though the[m]selves could bee contented with a more even and moderate reformation, it may bee feared, that the loud people delighting in change,

³⁸ i. e. untie.

³⁹ A too obscure word.

and will call for a mutation in every circ[um]stances, and when they have found their strength, will thinke nothing enough if they have not all that their wild and vnlimited Zeale approves of.⁴⁰ And then the interest of the Parl[iamen]t will be to settle a more rigid govern[men]t (to say no more) in the Church, then will now satisfy the[m], and all moderate Protestants. On

fol. 4r

On the Contrary, if &c. Doe wee believe the Prelacy, and the other ambitious Clergy will then bee any whit lesse insolent then they haue bene? Will they not rather adde to then diminish their ceremonies? Will they not pretend that preaching hath seduced the people, and beget Heresies? That the pulpit was the late Incendiary to the great mischiefe, and g^o take a pious occasion to bee idle, and make the abused people believe, that the Co:⁴¹ Pr[elacy] tende more to their Saluation then the frequency of preaching? Will these men of the Cassock be lesse vicious in their lives? Lesse corrupt in their doctrine? Lesse exacting in their Tithes, and pretended dues? And to conclude, will it ly in the interest or the power of the K[ing] (when busied to settle the confused Co[mmon] W[ealth] for his best advantage) to bridle his Clergy, which ever were, are, and wilbe the most considerable sticklers, when any bustle or mutat[i]on happens in a state? Wee must then looke to finde these sort of men still like them[selve]s so busy as if their employm[en]t were rather to improve Prerogative then salvation. Their predecessors (History tells vs) were almost allwaies opposers of their Prince, And some are of opinion that they do otherwise now not because their Religion, but their interest is altered. And it has been allwaies vnappily observed that their Conscience follows their dependency; and that they put their cases, and state their questions as much by the motions of the latter, as the former.

And if there were ever any reason to bee jealous of the incroaching power of Papists, it wilbe then: for if the K[ing] (for his Preservati[on] and through

fol. 4v

through necessity, the reasons now vrged vpon this occasion) bee driven to make vse of the[m], to do his busines &c. the Com[mon] people may fear that they shall hereafter see asmuch Popery mingled in their worships, as in their Armies: and those of better judgm[en]t cannot but conceive that when Papists have merited so much

⁴⁰ For two very hard words 'wild' and 'Zeal' in this sentence, I am indebted to my two supervisors, Dr. Thomas Ahnert and Dr. Felicity Green. The letter 'Z' is very hard to recognize but we can find a similar pattern of the word 'Citizen' in fol. 8r.

⁴¹ Probably Co[mmon].

fro[m] the K[ing] that they wilbe more modest with him then with God, from whom they dare challenge requitall for their merits; and vpon such a turne as this, it wilbe for their great advantage that the people (to whom the reputed Puritans, and Roundheads must by all means bee made odious) wilbe lesse troubled, if some of those seven Statutes ag[ains]t them, bee repealed, or dispensed with, and some other things bee done in their favour: for being trustier subjects to the K[ing] of E[ngland] (the first time it was ever thought they could bee so) then many of his Pro[testan]t subjects.

Such consequences as these wee must looke for on both sides, if the partiall sword and not the indifferent Synod must bee the Eccl[es]ia[stica]ll reformer.

The Religion which all moderate men (and I think most, and best) desire, is that which both sides promise; and yet that which wee cannot well expect fro[m] either side, should it become absolute. It is such a one as may bee found out betwixt the[m] both. &c. And But if the decision must be by bloud, and victory, the prevailers are then

fol. 5r

then bound, and perhaps necessitated to gratify their party with that kinde of Discipline which their humours call for: they must looke to fasten themselves by that power, and those principles by which they gained it. Who[m] as it is like to be quite otherwise, if peace suspend these differences; both sides must then goe on in an even, and well tempered Course, that they may politiquely hold fast that party, which their promises, and faire protestations won to them. &c.

In the next place examine how the State shalbe bettered by a mastery of either side.

Would wee have the laws better exercised which our predecessors left to vs? How much out of Countenance Law is, when the sword domineeres, wee need not bee informed by History. And when this Warre shall see an end, with how much difficulty shall wee be rendered capable of the vsuall course, and benefit of it? And wee know not who by that time may become Patron, and M[aste]r of our Law, and Nation: Or would wee haue new Lawes to serve our turnes now? Or confirme those wee haue gained this Parl[iamen]t? If that the sword shall draw vp new Statutes, it is likely they would be put short lived, or vse lesse; for no Politique ties, no not the most sacred assurance of an oath could ever make Princes observe the execution of them. And it may bee feared, that such violent gaining vpo[n] the Crowne, may bee an occasion hereafter, to wrest fro[m] vs all those advantages which the subject hath dearly bought this Parl[iamen]t vnder pretence that violence was the Mother of them all. Our

fol. 5v⁴²

Our libe[r]ties are not like to bee much enlarged, or secured by it, Martiall Law will erelong disseize vs of our Possessions, our Estates, and Lives; and what Judge shalbe able to redresse vs? and wee must run a hazard, what kinde of free men, or Slaves wee must bee heereafter.

But supposing wee shalbe bettered in all, when the Warre is ended, let vs with an intentive eye looke vpon the miseries which must bee our entertainment while the warre continues. Every County Like to bee the Seate of Warre. And so many Armies must neede consume Cattle and Sheepe, and the farmers stock, and so beget a famine with its companions, the plague, small pox, flux &c. And The treasure of the Land wilbe consumed, trade vtterly decayed; Arts Lost; Learning changed into martiall Discipline. &c.

Do reflect more closely vpon our owne more peculiar mischiefes; If wee must put off peace vntill another time, how desperate are wee? For those that ingage vs in a Warre, are not able to tell vs, who, where, how, and by whom it shall end; (this yours late, and sad experience of others may tell vs) The question heereafter wilbe not so much where is the right, but where is the power? For the right of Power must carry the busines. And it wilbe beyond probability that this K[ing]dome ever recover the purity of its Religion, its Lawes, its Customes, its Govern[men]t which haue bene settling about 500 years,⁴³ nor let our present Superiours bee angry at the Conjectures; for

fol. 6r

for I cannot assure myselfe who shall live to strike the last blow. And it hath in all Ages bene observed, that designes in warre change like Scenes in a masque, where wee see new apparitions ere⁴⁴ wee are aware of them and the events of one year may beyond all expectati[on], vary or heighten the quarrell. And it is allwaies found that success lifts men vp about themselves; for a prevailing power seldome knowes any bounde, or modesty, the subject will want his old sanctuary then which our Predecessors provided. For Lawes are but the Ligaments of peace, and the souldiers will break them like threds.

See how gradually wee must come to such a Condition as this.

And first, because wee will not vndertake to define the quarrell as it now stands, Largely, nor saucily, we will conceive it thus; A Working iealousie fixed in a divided

⁴² From this folio Rossi restarted his transcription.

⁴³ Rossi then stopped transcribing the following sentences and folios until fol. 6v.

⁴⁴ i. e. before.

K[ing]dome, both sides choosing rather to dy, then to trust one another. From this roote must necessarily spring these inconveniences; wee must execute the designes of our enemies vpon ourselves; the K[ing] may receive his death fro[m] the hand of a Subject, while it is reached forth (if you will believe his vowes) for his good, and safety. The father &c. No County, scarce any City, or Corporati[on] so vnanimous, but they haue division enough to vndoe the[m]selves. And it is evident enough, that this rent will increase vntill wee shalbe

fol. 6v

shalbe quite torne in peeces; for when the fatall sluice⁴⁵ of bloud shalbe drawne vp higher, in all probability the veines⁴⁶ of the remaining people swelling with revenge for their bettered (party) are likely to be drained dry throughout the K[ing]dome.⁴⁷ If wee will leave our differences to the dispute of the sword, we shall not want an Vmpire; one that will come in to part vs, or to part stakes with vs. Let this mediatour chance to bee of a Religion like ours, or of one quite opposite vnto it, who shall pay the souldiers for their journey-worke? Must money be raised for the[m]? It must bee digged for them: I believe little wilbe found above ground. Or must promises serve the turne? &c. No wee shall finde the interest of that State must bee satisfied either with our ruine, or with mingling the[m]selves in our Estates, and govern[men]t.

Or Suppose our Neighbours winke on purpose &c. vpon whose purse shall our Armies live? Must the Countreys maintaine the[m]? It must bee then by the farmer: but he can neither sow, nor reap, nor breed vp, nor repair his stock in the heate of such a warre as ours. Else must the Clothier doe it? Whence shall he haue his many necessities, and how shall hee vent his clothes? If these faile, the Countreys cannot bee long considerable &c. Is it expected that the City must do all this? That little which they have got before hand, and make their store, is

fol. 7r

is so impaired, that it will scarce maintaine the[m]selves, vlesse it bee by a continued course of trading, which as it is now languishing, so it wilbe ere that time quite dead and buried. The City is as it were the Stomack, which digests the trading of the whole K[ing]dome; and afterw[ar]ds returnes to every seuerall part of it, that nourishm[en]t which supports it: If weakens, and obstructions bee found there, a consu[m]ption soone steales vpo[n] the whole body. But suppose it were rich, and full enough to

⁴⁵ i. e. sluice. See Oxford English Dictionary.

⁴⁶ i. e. the plural form of vein.

⁴⁷ From the following sentence, Rossi again restarted his transcription.

serve the turne; yet they will not let downe their milke to a violent hand; they must bee stroked, and humoured, else they wilbe stubborne. If they chance to bee at discord, it wilbe hard to collect any considerable summs; and if that discord bee hightened (by the cunning practice of any) into a mutiny among the[m]selves, they wilbe able to vndoe one another, without the help of a drayning Army. &c. After all, what face at best will their K[ing]dome haue? What a ruinous Nobility, what a decayed Gentry, what a beggarly Commonalty will it bee peopled with all? And what age shall euer see those fewds eaten⁴⁸ out which these Civill broiles will beget? &c.⁴⁹ Ireland, one of our main bulwarks, gained and fortified not without infinite expence of the treasure, and bloud of our Ancestors, ready to bee possessed by a dangerous enemy, who fro[m] thence will euer batter our peace; and it is likely may make such breaches as may let in heereafter (if wee escape the[m] now) as many miseries as Ireland now grones vnder. In

fol. 7v

⁵⁰as farre as wee can at distance, on which side advantages leave most.⁵¹

The ground of such a warre as this, is the affections of the people; and vpon this both Armes are built, and kept vp. We will g^o guesse which of them hath the surest foundati[on]. It hath bene observed, the Parl[iamen]t hath made little difference, (or not the right) between the Gentry, and Yeomanry, rather complying, and wining vpon the latter, then regarding, or applying the[m]selves at all to the former. And they may bee thus excused; they did not thinke Justice to looke vpon any man according to his quality, but as hee was a subject; I hope this was all the reason; but howsoever, it appeares not that they yet haue, or are likely to gaine by this policy. The Com[mon] people, could they bee fixed, were onely worth the courting, at such a time; but they are almost allwaies heady, and violent, seldome are lasting, and constant in their opinions. They that are to humour the[m], must serve many M[aste]rs who though they seeme, and indeed are their inferiours, yet grow imperious vpon many occassions; Many actions of merit how eminent soever, shall not prevaile with them to excuse one mistake; want of successe, though that bee all the Crime, makes them angry, murmuring, and jealous: whereas a gentleman is better spirited, and more resolute; and though hee suffereth by it, had rather stick to that power that will countenance him, then to that which makes no difference betwixt him, and a peasant. The gent[leman] followes his resolute[on] clo[se] and winns of his silly Neighbours many

⁴⁸ CF: 'baten'. Rossi, *La vita*, vols 3, 502.

⁴⁹ Rossi then skipped the following sentences until the next paragraph in folio 7v.

⁵⁰ Though the first word is different from the last word of the last folio, it seems to have no page missing here, since folio 7r and 7v are written in the same sheet.

⁵¹ Rossi restarted from the next paragraph.

times eit[her]⁵² by his power, by his example, or his discourse, when —s⁵³

fol. 8r⁵⁴

as they have an easy faith, quickly wrought vpon and vpon the next turne will fall off in sheles⁵⁵. They are a body certainly of great Consequence, when they are headed, and ribbed by the Gentry; but they haue a craven, or a vnruly courage (which at best may rather bee called obstinacy, then resolution) and are farre lesse considerable when the most part of the Gentry, or chiefe Citizens divide the[m]selves fro[m] them.

The Parl[iamen]t hath nothing to cement itselfe, to increase, and fix their party, and keep it fro[m] staggering, but a little temporary reputati[on], and a resolution to hold fast to the publike good; and this (if things runne so high as they do now) wilbe called rebellious stubbornes, and bee branded with the fowle imputati[on] of treason. Whereas the K[ing] (as the chiefe master and dispenser of the Co[mmon] W[ealth]) is able to fit the humour of every man, that hee hath a minde to take off. Hee hath honour for the proud, places of trust for the ambitious, interiour offices for the busy men. &c.⁵⁶

A Prince by his agents will keepe off the aid of forraine States fro[m] the[m], but is seldome denyed some contribution tow[ar]ds his owne defence. And if they contribute any thinge, it wilbe just so much as shall serve to hold vp the warre. And will give it as fevell⁵⁷ to maintaine

fol. 8v

maintaine the fire, not as water to suppress, and quench it; for they never yield assistance where their advantage shall not largely recompense it. And if it so fall out that the interest of an adjoyning State shall chance to bee mingled with the actions of the Neighbouring Subjects, their Prince will vse all arte (having the most expert instrum[en]ts for it) to disable, or take off that party; Hee may qualify that State before hand by parting with some thinge hee hath right vnto; or may do it by

⁵² The latter half of the word is missing since the folio was impaired, but according to the meaning of the paragraph it should be 'either'.

⁵³ The word could not be recognised since the folio is impaired.

⁵⁴ It seems some folios are missing between folio 7v and folio 8r. From the physical appearance, folio 1r to 7v belongs to a booklet while 8r to 11v belongs to another. From the content of folio 7v and 8r, they do not closely match. The end of folio 7v describes the good characteristics of gentlemen who would insisted their beliefs, while the beginning of folio 8r depicts some people who had 'easy faith' and 'vnruly courage'.

⁵⁵ CF: 'shoales'. Rossi, *La vita*, vols 3, 502.

⁵⁶ From here Rossi skipped again until folio 10v.

⁵⁷ i. e. fuel.

Corrupting some eminent Engineeres there; some great Officers and some of the most popular men; or by kindling some divisions among the[m] so to busy the[m] at home, that whilst their owne house seems to bee on fire, and like to burne further, they may not bee at leisure to quench their Neighbours flames.

There is a president⁵⁸ that seems to encourage very much the prosecuti[on] if this warre, (1) the late successe of the Scotts. But I fear, if wee parallel our present conditi[on], and theirs together, wee shall finde that wee shall differ point blanck in most circu[m]stances but the nature of the cause.

1. When their great worke first began, the 3 K[ing]domes were gra[dua]lly discontented: and they all did as it were conspire to its assistance either in secret or openly conceiving it to be their owne busines, that owne quarrel. 2

fol. 9r

2. Amongst our great men, heere, there were very few stood neere the sterne, and those not at all plausible with the people. And our chiefe Nobility and Gentry had no countenance shewed the[m] at Court, and could not on the sudden bee so farre engaged on that side as the service required, &c.

3. The K[ing]'s Councillors knew not how to bestir the[m]selves properly in a warre, very few of them being fit to bee military Statesmen.

4. The Papists (although their agents, and their purses were busy,) never shewed the[m]selves in a body.

5. The Cavalry both at home, and fro[m] abroad, (whence many come to a more vncertaine service) did belieue that they fought for their Countrey, and not ag[ains]t the King, whilst they opposed the[m]selves ag[ains]t his Army.

6. They fought ag[ains]t another Nation, (an old enemy scarce reconciled) and had no reluctancy, no feare of killing a father, &c.

7. The Scale of the warre was out of their owne confines &c.

8. They had not the controlling presence of awfull Ma[jes]ty; which takes off, prevents, and counterplots the designs of any that are working neere to it.

9. And lastly, (not to looke into more private reasons which perhaps might be vrged) wee shall finde that the conditi[on], and temper of the people, and

fol. 9v

and Gover[n]m[en]t of Scotland well weighed with ours (at this time) wilbe very different, and may well divert vs fro[m] levelling at the same ends. &c.

⁵⁸ i. e. precedent.

To goe on in our arguem[en]t of Advantage, or Disadvantage: when once the people shew the[m]selves to bee sensible of the smart of warre, nothing can so much wipe away the remembrance of former Injuries, and ingratiate any party as to bee forwardest (though but in mere shew) to an accom[m]odati[on]. &c.

The K[ing] the more likely to draw to him the affection of the people, in that the pressures, and miscarriages of his late Gover[nmen]t are passed, &c.

The K[ing] (a sillable of as much advantage as another Army) in his very name is sacred, and powerfull, and shakes the conscience of many, who would else have willing hands, and ready purses to oppose his Army. Hee hath the advantage of the written Law, which hee can vse now in his defence, &c. A Councell so well mingled, that hee hath some versed, and cunning in the law; and that knew how to turne it to the most necessary vse; some crafty in all the windinge of State, some experienced in all the designes of Warre. His intelligencers are in the very botome of the Antagonists, or else his Agents conjure: and his owne Councells are secrete, till hee thinks fit to divulge the[m]. &c. It is a fond thinge certainly to thinke his Army can want am[m]uniti[on], having any port open: or that it will want money, more then the other; If the K[ing]dome hath

fol. 10r⁵⁹

may reach to the good of the people; and so far onely the affaires of the King; wee haue good reason to belieue that a peace would bee welcome to him. &c.

For the other, shall onely advise the[m] to remember what they are; of who[m] they are made; and why they are met. And because they want the winde, (the auspicious gale of complying M[ajes]ty) and enough of the tide (the full streame of the peoples affections) and seeing the storme growes high; and it is fowle weather, it may bee better to hale in, and betake the[m]selves to a harbour, lest the State suffer shipwrack, whilst the helme seems to bee in their hands.

But I may bee a little bolder which may follow Subjects, and shall enquire what truly is their interest now, whilst their safety is thus endangered.

Slavery, (the feare of which is accounted worse then death by such as haue bene borne freemen) could neuer befall vs, if wee did not helpe to binde ourselues by our owne hands, and admit it by our owne divisions; The people while they hold together, are like a vast Ocean; An absolute Power cannot possibly made through to its ends, vnlesse they fall back one fro[m] another, and become like those wonderfull walls of water, which gave the Israelite leave to passe through on dry Land; Should the fond English this farre sever the[m]selves, wee should also bee a wonder to Posterity. This

⁵⁹ It seemes that there are some folios missing here.

is feared on both sides, and avoyded rightly by neither. Wee fight to make one side great,

fol. 10v

great, which being done, the other must neede bee too little.⁶⁰ If the inferiour parts of the body, the members of it, be made to swell beyond their due proporti[on], wee presently dislike the symptomes, and feare a dropsy; and that Body whose head is swelled, and made greater by ill humours, then it should bee, is of a diseased constituti[on], hath but weake Limms⁶¹, and almost nothing but leannes every where else.

There may bee reaso[n] to bee aswell afraid of an extravagant popular power, as the exorbitancies of Monarchy. But whilst wee endeavour to avoid the one, let vs bee carefull, that wee do not engage ourselues in the other: It were well g^o, That when Propositions shalbe tendred to his M[ajes]ty That the Nobility, and Gentry (for I hope the former Delinquents, and Papists do not advise, though they assist) which haue separated the[m]selves fro[m] the Parl[iamen]t should discover the[m]selues without passion, according to their true Interests, &c. Let the[m] not revenge the[m]selves vpo[n] Posterity, by setting vp ag[ains]t the[m]selues, not onely a large power, but an Authority also, even by their owne Grants, by their owne swords⁶². It lies not in the power of the Subject, to conferre more tow[ar]ds their Slavery, then to pull downe a Parl[iamen]t (vpo[n] what necessity, or pretence soeuer) with their owne hands. This shalbe a lasting president, and disparagem[en]t in all Ages: and a warrant to all Princes to discountenance the[m], since they worke no better efforts vpon the State;⁶³ and that side must bee sure to owne all the

fol. 11r

the guilt, which shalbe overthrown. A Parl[iamen]t wilbe said to bee the sole Author of these miseries; thus it wilbecome the disdaine, which was allwayes hitherto the Darling of the people; Thus a perpetuall prejudice shall stick vpon all hereafter, and then what vse shall the overborne Subject haue of his Sanctuary? If it want reverence, it will want power; If it want power, it will onely serve to give away our Estates, not amend the[m] &c. Let them seriously consider to which side they ought in right

⁶⁰ Rossi restarted his transcription from the next sentence.

⁶¹ CF: '*limbs*'. Rossi, *La vita*, vols 3, 503.

⁶² CF: '*hands*'. Ibid. At the first glance it might be recognised as '*hands*', but actually it was '*swords*' since the first character was certainly not a '*h*'.

⁶³ Rossi skipped again until folio 11v.

reaso[n] to give the most advantage, in these propositions. When a Prince winnes any thinge fro[m] his people, (much more when they vrge it vpon him) Hee wilbe sure to hold fast what hee hath, and many times improves, never diminishes it; Whereas if the Subject gaine any extraordinary thinge fro[m] the Crowne, (how necessary soeuer) with what difficulty is it enjoyed? How many tricke, and evasion have the Instrum[en]ts of State to cozen the people of the benefit of it? &c. yet it must bee averred, That hee that robs his Prince of His Honours, impaires the reputati[on] of his Countrey; bee com[m]unicable to the Co[m]mon W[ealth] sins ag[ains]t both. The punctuality, — of the Honour, and Greatness of the K[ing] hath seldom bene enough to hold vp a war with wary Subjects, especially among the[m]selves; Let the[m] take care to do thinge safe, and honourable for the Co[m]mon W[ealth] (of which hee is Chiefe) and it wilbe impossible, That the K[ing]'s Honour, and Safety

fol. 11v

Safety should not bee mingled with it.⁶⁴ I hope he will finde as much Honour in saving a perishing K[ing]dome, as if hee were gaining a new one. And while hee thus makes a Conqueste on his peoples Hearts, hee renders himself greater, then his driving Councillors could make him, were they at the end of their Designes. It were worth our Joy to see him returne triumphy with but not over his people.

And as that party should do their Duty; so is their reaso[n], That they on the other side should do theirs. Let them remember that they haue a K[ing]; That whilst hee is in a cloud, wee are in the shade, and want that influence which may revive the State, and make it flourish, &c. Let the[m] lay aside all violent conceits, and expectations⁶⁵; and let the[m] believe (having so good reasons for it) that they will sooner reach their destructi[on], then that through Reformati[on] which by many us aymed at. &c. Our sad case is now such, that wee haue an incensed god; and angry King, a thwarting Councill; a heady Clergy; a divided Nobility; a discontented Gentry; a distempered people; a distracted Religion; an vnHINGED State; a confused government; vndermining Adversaries; a Civill War; an increase of Souldiers; Consumption of treasure; disunion in vnited K[ing]domes; lost reputati[on]; an vniversall jealousy; a defecti[on] from the principles of sound policy
[The manuscript ends here; the remaining folios are missing]

⁶⁴ Rossi restarted his transcription from the next sentence.

⁶⁵ CF: 'dissertations'. Rossi, *La vita*, vols 3, 503. 'dissertations' should be 'expectations'.

E5-3-46: 'Treatise on the powers of king and parliament'

The surviving manuscript contains text from William Prynne, *The Treachery and Disloyalty of Papists to Their Sovereignes: Together with the First Part of the Sovereigne Power of Parliaments and Kingdomes* (London: Printed For Michael Sparke Senior, 1643), 40–105. A large number of sentences were shortened and some words replaced. A comparison with the printed version reveals that the copyist used the following conventions:

- (1) The signal '&c' or 'e' with a long tail (here transcribed as 'e.') usually means that the copyist skipped some sentences or passage. For the latter signal I will use 'e.' to specify it.⁶⁶
- (2) g^o = ergo = therefore.

Some words are spelled differently in the manuscript and in the printed work. Here are some examples (the former is from the printed work while the latter is from the manuscript): just = iust / than = then / reigne = raigne / publicke = publique / usuall = vsuall / chuse = choose / Councels = Councells / anciently = anntiently.

The following abbreviations are frequently met in manuscripts E5/3/46 and E5/3/49:

L: = Lo: = Lords	the(m)s = themselves
P: = Par ^{lt} = Parliament	Xn = Christian
Co: = Common(s)	agt = aganist
vp(o) = upon	Au(th) = Authority
Pap: = Papist	Scrip: = Scripture
Emp: = Emperour	Reg: = Regal
presid ^{ts} = presidents = precedents	
nre = nature	
Rel: = Religion	

⁶⁶ By contrast, in E5/3/45 'e' usually signifies 'and'.

fol. 5r (Prynne, p. 40, staring in the middle of line 1)

allay, abolish, and resume some branches of the K[ing's] Royall Power, and preroga[tive] if there be just Cause, as when it becomes onerous, mischieuous, and dangerous to the Subjects inconvenient to or inconsistent with the K[ing]dome's welfare, peace, safety, liberty, or the Lawes. This [is] apparent by Mag[na] Ch[arta] de foresta, stat[utum] de Prerog[ative] R[oyal]s et de Talla[gio] non concedendo. The Pet[ition] of Right, most stat[utes] against purveyens, Pardons, Protections, the acts made this Parliament against Ship-money, K[nigh]thood, forrest-bounds, pressing of souldiers, the Starr-Ch[amber], High-Com[mission], Trien[iall] P[arliament], contin[uance] of this P[arliament]. &c. which restraine, abridge, repeale, and resume diuerse real and pretended branches of the K[ing's] Royall Prerog[ative], because they proved grievous, and mischievous to the people, and dangerous, and pernicious to the K[ing]d[om]. This then answers that irrationall, groundless posit[ion] of Dr. ferne, that the subjects neither lawfully may, nor ought in any case to resume all or any part of the Reg[al] power wherewith they haue once invested their K[ing's] by Com[m]on consent, which as it is contrary to that received principle of nature and reaso[n]: eodem modo quo quid constituitur, dissolvitur. That all govern[men]ts created by men's Consents may be altered, diminished, or repealed by their Consents, to sundry Presid[en]ts, and prophecies in Script[ure], concerning the alterat[i]on[s], subversions, and diminutions of K[ing]s and K[ing]dome[s]; to the constant practice of all Realms, and States whatsoever, for Adam till this instant, who haue vndergone many strange alterations, Eclipses, diminutions, yea period of govern[en]t to the resolution of Arist[otle] and all other politicians, who hold all formes of Government, changeable, and revocable, without any injustice, if necessary or convenient; so likewise to the very end, for which K[ing]s haue Regall Power (aswell as other Governours and Governm[en]ts) were ordained, to wit, their K[ing]dome[s], people's welfare, safety, peace, protection, &c. Salus populi being not onely that Suprema Lex, but principall

E 513/46

Bill, L. Roy clemency les Trauile subord, accept tour
benivolence de. The Com: having y^e sole power to grant or
deny subsidies & taxes when they sh^{al} cause; & to limit y^e sports of the
y^e manner & time of paying the; & to order how & by who they sh^{al} be
received & employed, as all acts of the re^{is} manifest. If then they
be the chief L. makers in these Acts w^{ch} lay any imposition upon
y^e subjects goods, or persons or by persons, then by like reason in all
other penall publick Lawes.

Secondly, All Acts of L^{ts} made in the reignes of usurpers who
have no Title to y^e Crown, nor right to appoint to Lawes, are
void, & good in Law, & sh^{al} bind y^e right here to y^e Crowne, as
is evident by y^e L. made by R. John, H. 4. 5. 6. (reputed usur-
pers by E. 4.) and R. 3. acknowledged an Usurper, whose Lawes
are yet in force. The reason is (as is clear by E. 4. c. 6.) because
y^e Lawes and all other Judiciall Acts in Courts of Justice, are
y^e acts of the P^l & Courts thes: w^{ch} are lawfull: not of the R.
who is unlawfull. y^e certainly the legislative power is ours in
y^e P^l then in y^e R: if not w^{ch}oly in it, the being Lawes & the
begin the w^{ch}.

Thirdly, Admit y^e R. should dy without Heir, no doubt y^e R.
& Pa. have a right either to alter y^e govern^t or dispose of the
Crown, to w^{ch} family they please, as y^e constant practice of all R^{es}
in such cases manifestly sh^{ew}. If y^e R. be an Infant (as some of our
R^{es} were when y^e Crown descended to the) or non compos mentis,
or taken wth a dead palsy or Apoplexy, or an Idiot by Birth or Age,
or a Monk professed, or absent in a pilgrimage to Rome or a
voyage to y^e Holy Land & no doubt in all such cases, the
right of creating a Protector to execute Regall pow^r sumon
P^l

fol. 5v (Prynne, pp. 40-41)

principall end for which all Royall Power was instituted by God and Man, and to which they must submit in case it becomes incompatible, and cannot consist together without damage or danger to the publique safety. &c.

Fifthly, The K[ing], though he be the chiefe, and principall, yet he is onely one member of the Parl[iamen]t and K[ing]d[ome] the least (because but one person) though the highest branch; the Lords and Commons (not elected by, but assigned Councillors to the K[ing] by the K[ing]d[ome] and people) being the greatest, and most considerable part, as representing the entire body of the K[ing]d[ome]. Now Common reaso[n], Law, and Experience manifests, that the whole, or greatest part in all politique, or n[atu]rall bodies, is of greater power, and jurisdiction then anyone particular member. Thus in all Corporations, the Court of Aldermen and Com[mon] Co[uncell] is of greater power then the Maior, though the chiefe officer. The Chapter of greater author[ity] then the Deane, the D[ean] and ch[apter] then the B[isho]p, the whole Bench, then the L[ord], chiefe Justice, the whole Councell then the Presid[en]t, the whole Par[liamen]ts, then either of the H[ouse] and by like reason then the K[ing]; especially, since one of the 3 Estates is lesser then the 3 Estates together, who in Par[liamen]t by the fundamentall Constitutions of the Realme, are not subordinate, but Coordinate parts of the same great Com[mon] Co[uncell] of the K[ing]d[ome]. It is Arist[otle's] expresse determinat[i]on, that in an Oligarchy, Aristocracy, and Democracy, whatsoever seems good to the major part of the Governors of the Co[mmon] wealth, that is ratified, and that it is vnfit the part should be above the whole. And in all Courts of Justice, Coporations and elections, the Major p[ar]t haue allwaies had the greatest sway, and constantly overruled the lesse, though it be but by one Casting voice; as is evident in the Election of K[nigh]ts, and Burgesses, and in votes of the Pa[rliamen]t in which the K[ing], Lo[rds], and Co[mmons] by the Co[mmon] Law, making up but one intire Corporat[i]on since then even in Par[liamen]t itselfe, the major p[ar]t over-swayes the rest, yea the

fol. 6r (Prynne, pp. 41-42)

the K[ing] himselfe, (⁶⁷who hath no absolute negative voice, but onely in refusing to passe some kinde of Bills, not all, (of which more heereafter) doubtlesse the whole, or major p[ar]t of the P[arliamen]t (which in Law is the whole) is above the K[ing] the chiefe member of it. Which consideration together with the Stat[utes] of 5 R. 2.

⁶⁷ This is a separate bracket without its corresponding ending bracket in this manuscript.

St[atutes] 2. c. 4. 6. H. 8. C. 16. Enacting, that none elected to be in any P[arliamen]t shall depart, or absent himselfe fro[m] the same P[arliamen]t till it be fully ended, or prorogued without speciall licence &c. completely answers that fond cavill of the &c.⁶⁸ that the K[ing] and many of the other members haue wilfully absented thems[elves] from the H[ouse], of purpose to dissolve it if they could, notwithstanding the late speciall act made by their ioynt consents for its continuance. g^o, this vnlawfull action of theirs (to effect this pernicious designe) must nullifie, or at least invalid (in their new non-sense law and Logick) the lawfull p[ro]ceedings of those worthy faithfull members who continue in it. e. If these absent members be the greater number, why do they not come, and overvote the rest in the H[ouse] in a peaceable, legall, vsuall parliamentary way, rather then challenge them into the field in a military, illegal, vnusuall bloody manner, e. If the lesser p[ar]ty, then present or absent, the major p[ar]t must over-rule them volens nolens, as it hath ever vsed, vnless they will be willfuller (I cannot say wiser) then all their predecessors put together.

As for his M[jes]ty's absence fro[m] P[arliamen]t.⁶⁹ 1. It was without any iust Cause given by the P[arliamen]t. 2. much ag[ains]t their wills who haue oft[en] petitioned for his returne. 3. His absence was p[ro]cured, and is continued those alone who most vnjustly taxe the P[arliamen]t for it, and would take advantage of this their owne wrong. 4. Though personally absent as a man, yet he is still legally present in P[arliamen]t (called the K[ing]'s presence) as he is a K[ing], as he is in all other his Courts of Justice where

fol. 6v (Prynne, pp. 42-43)

where all p[ro]ceedings are entered[,] Cora[m] Rege, though the K[ing] never yet sate personally in either of them, &c. yea, he must cease to be K[ing] of Engl[and], [wh]ere he can be legally absent from his P[arliamen]t of Engl[and]. This hee wilfull personall absence from e.⁷⁰ is (as may conceived) an act of the highest injustice that ever any Prince could offer to his P[arliamen]t, worse then Reh[oboams] forsaking the Counsell of his anntient sages,⁷¹ to follow the hare-brained advice of his young

⁶⁸ Here the copyist omitted the following words: 'that fond cavill of Malignants and Royalists against this Parliament; that the King...'. See Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 1st pt, 42. The copyist may have intentionally omitted those who were accused by Prynne.

⁶⁹ CF: 'As for his Majesty's absence from Parliament by the pernicious advise of evill Counsellors; so much insisted on by Malignants'. Again, the copyist seems to have refrained from referring to royalists as evil counsellors or malignants.

⁷⁰ The following words were here omitted by the copyist: 'his great Counsell which desires and needs it'.

⁷¹ Narrated in 1 King and 2 Chronicles, Rehoboam was an Israelite King who was involved in a civil war.

Cavaliers, for though he followed not their advice, yet he withdrew not him[se]lf from the[m], as his M[ajest]y doth now sever him[s]elf from his P[arliament], not onely without, but ag[ains]t all pres[ede]nts of his former predecessors, except King R[ichard] 2 (who once absented him[s]elf from his P[arliament] above 40 daies, yet then returned to it vpon better advice) and the very Com[m]on custome and Law of the land (which he is obliged by his Coronation oath, and many late P[ro]testations added to it, constantly to maintaine). This appears most clearly by the anntient Treatise, of the manners of holding P[arliament]s in Engl[and] which resolves thus, The King is bound by all means possible to be present at the P[arliament] vnless he be detained by sickness, and then he may keepe his chamber, yet so as he lye not without the Manour or towne at the least, where the P[arliament] is held; and then he ought to send for 12 persons of best account in P[arliament] (1) 2 B[ishops], 2 E[arls], 2 B[arons], 2 K[nights] of the shire, 2 burg[esses] and 2 Citizens to looke vpon his perso[n], to witnesse his estate, and give Authority to the ArchB[ishop] of the place, the Steward of Engl[and], and chiefe Justice, that they iointly, and seuerally should begin the P[arliament] and continue the same in his name, expresse mention being made in that Commission, of the cause of his absence there, which ought to suffice. &c.

And whereas Malignants clamour, that most of the Lords are absent

fol. 7r (Prynne, pp. 43-46)

absent aswell as the K[ing], g^o, this can be no lawf[ull] P[arliament]. The same Author will informe them, that if the Lo[rd] be once summoned to P[arliament], and then appeare not or absent thems[elves], the King may hold the P[arliament] with the Commonalty, and Com[m]ons of the K[ing]d[ome] (every of which hath a greater voyce in P[arliament] then the greatest Earle in Engl[and], bec[ause] he represents a whole Country, towne, or City, the other himself alone) without B[ishops], Earls or Barons; bec[ause] in times past, before there was other B[ishops], E[arls] or B[arons], yet even then K[ings] kept their P[arliament]s; but on the Contrary, no P[arliament] can be kept by the K[ing] and peers, if all the Com[m]ons (for the K[ing]'s misgovernment or such like casue) should absent thems[elves]. This is the judg[men]t of M[as]t[er] Jo[h]n Vowel too. &c.

Sixthly, It is most apparent both by Script[ure], the verdict of all Polititians, and writers of note, the Stat[utes] of our Realme, and Lawyers, that K[ing]domes, subjects, and P[arliament]s were not created by God for the wills, pleas[ures], profit, or benefits of K[ings], but kings were at first constituted, and still continued for the p[ro]tection, welfare, benefit, service of their K[ing]d[ome]'s people, whose publike Serv[an]ts,

ministers, shepherds, fathers, stewards, and Officers they are. Now natur[e], reason, and Scrip[tures] resolve that he who is instituted meerely for the benefit and service of another is of lesse dignity, power and jurisdict[ion] then the entire body of those for whose good he was instituted e. which considerat[ion] hath caused sundry K[ing]s and Emp[erours], not onely to adventure their lives in battle, but to lay downe their Crownes for the peace and saftey of their subj[ects]; witnesse Otho the first (see Eutropius, Grinstone and others in his life) with the examples of Moses &c. The K[ing] then being made K[ing] onely for e. must needs (in this regard) be inferiour to, not paramount them in absolute Sovereaign Power, though greater then any particular subjects.

Sevenly, the P[arliament] (as our law-bookes and writers resolve) is the most high and absolute power, the supreamest, and most anntient court of

fol. 7v (Prynne, pp. 46-47)

of the Realme of Engl[and], and hath the power of the whole Realme both Head and Body; And amongst other Priviledges this is the highest, that is about the Law itself, having power vpo[n] iust grounds to alter the very Com[mon] Law of Engl[and]; to abrogate, and repeale old lawes, to enact new, impose taxes, interpret &c. repeale patents, Charters &c. if erroneous or illeg[al], not onely without, but ag[ains]t the K[ing's] personall consent, so far as finally to oblige both K[ing] and Subj[ects]. Now it is clear on the contrary side, that the K[ing] hath not the power of the whole Realme vested in his person, that he and his Prer[ogatives] are not above, but subord[inate] to the lawes, that he cannot by his absolute Reg[all] power alter the Com[mon] L[aw] in any particular point whatsoever, cannot repeale any old, nor enact new L[aw], nor impose &c. nor imprison [their persons]⁷², distaine [their goods]⁷³, declare law, or reverse any judg[men]t in the meanest C[ou]rts, without or ag[ains]t his people's ioynt Consents in P[arliament]; for potestas sua iuris est, et non injuria, et nihil aliud potest R[ex] in terris, nisi id solum q[uo]d de jure potest. Bract[on] [l. 3. c. 9. f. 107]⁷⁴, g^o, the Parliament in this regard is the most Sover[aigne] Auth[ority] and greater in jurisd[iction] then the K[ing] &c. whence it follows, that the K[ings] of Eng[land] are no absolute Princes, as some Court-Divines e.⁷⁵ but meere mixt Sovereignes, inferiour to their L[awes] and Parliaments, the sole Law-makers and L[aw-] Alterers, though not ag[ains]t but with the K[ing's] assents, considered not abstractively as K[ing's], but copulative[ly] as a branch and member

⁷² Prynne, *The Sovereaign Power of Parliaments and Kingdomes Divided into Foure Parts*, 1st pt, 46.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ CF: '(as some Royalists and Court Divines, most falsly averre them to be) but mere ...'. Ibid.

of the Parliament. And indeed to speak impartially, though the K[ing's] Royall assent be g[ene]rally requisite to passe and ratify L[awes], yet I hu[m]bly conceive, that the originall prime legislative power of making L[awes] to binde the Sub[jects] and their post[er]ity, reste not in the K[ing's] owne Royall perso[n], but in the K[ing]d[ome] and P[arliament] which represents it, for first

fol. 8r (Prynne, pp. 47)

first, admit the K[ing] should p[ro]pound any L[aw] to his people (as K[ing]s and L[aw]-givers usually did at first) yet these L[awes] would no way oblige the[m], vnlesse they voluntarily consented and submitted to them in Parliament. &c. Q[ue]stio[n]es tangit &c. the K[ing] doth but like a minister in marriage, declare it to be a Law, but it's the parties consents which makes the Marriage, and the peoples onely that makes it a L[aw] to binde the[m]. Whence those in Scotl[and], Irel[and], Man, Garnsey, and Jersie are not bound by our English statutes (nor we by theirs) nor Tenants in Ancient Demesne, because they consented not to the[m]. g^o, the chiefe legis[ative] power is in the people and both H[ouses] of P[arliament], not in the K[ing]; as it was in the Roman Senate⁷⁶, where the people had the Sover[aigne], Iuris[diction] of making and confirming L[awes], to binde the[m], not their K[ing]s, Emp[erors], or Senate, as I shall hereafter manifest. Secondly, this appears by the case of Customes, and By-Lawes in Corporations, and Mannours which binde all the Corporat[i]on, and Tenants (if they be reasonable) without the K[ing's] or L[ord's] consents, by reaso[n] of their mutuall assent alone; And as these privates By-L[aw] oblige all those who Consent to them, by reaso[n] of their owne free assents onely, so do all publique Acts of P[arliament]s oblige all Subjects, onely because of their g[ene]rall assents to the[m] in their Knights &c.⁷⁷ elected by and representing their persons.

Thirdly, All Acts of P[arliament] are usually made, framed, altered, thrice read, engrossed, voted, and fully 'agreed' [*sic*] vpo[n] in both H[ouses] without the K[ing's] personall knowledge or privy for the most p[ar]t, before they come to haue his Royall assent. And when they are thus agreed on by both H[ouses], the King cannot alter any one word or letter in them (as the H[ouses] may do) but must either absolutely assent to, or consider further of them, as the H[ouses] sendes the[m]. And if the K[ing] send any Bill he desires to haue passe, it must be thrice read and assented to in both H[ouses] (which haue

⁷⁶ The printed version used 'state' not Senate. Ibid.

⁷⁷ The following words were here omitted by the copyist: 'Citizens, and Burgesses'.

fol. 8v (Prynne, pp. 47-49)

haue power to reject, alter, enlarge, or limit it as they thinke meete) else it can be no Act at all. A cleare demonstrat[ion] that the chiefe power of enacting and making lawes is onely in the people, Com[mons] and Peeres, not the King, who by his writ doth purposely sum[m]on them to meete, and erect laws, as the chiefe legislators. Witnesse this notable clause in the writ, Ita q[uo]d ijdem Milites plena[m] et sufficientem potestatem pro se et com[m]unitate comitatus predicti, et dicti Cives et Burgenses pro se et com[m]unitate civitatu[m] et Burgoru[m] p[re]d[ictorum] divisim ab ipsis h[ab]eant, ad faciendu[m] et consentiendu[m] hijs quae tunc et ib[ide]m De Co[m]mun[i] Consilio dicti Regni (not Regis) nostri contigerint Ordinari super negotijs antedictis. Ita quod pro defectu protestatis huiusmodi &c. dicta negotia infecta non remaneant quovis modo.

Fourthly, All publique Acts are the whole K[ing]d[ome]'s Lawes, made principally and solely for the subject's benefit, if good, their prejudice if ill; g^o, they knowing better what is good or bad for the[m]selve[s], then the K[ing] alone, it is iust and reasonable that they and not the K[ing] should be the Principall L[aw] Makers, to binde, or burthen them[selve]s with any new Lawes, penalties, or restraints.

Fifthly, It is clear, that all Acts which give any subsidy, Tax, penalties, or forfeitures to the K[ing] are made onely by the people in P[arliament] and not principally by the K[ing], since the K[ing] cannot be said in any propriety to give any thinge to himself. This vndeniable by the forme of pen[n]ing all subsidy Bills granted by the Com[m]ons, or Clergy. Your Com[m]ons assembled in e.⁷⁸ humbly, presend your M[ajesty] with the free and cheerfull gift of 2 intire subsidies, which wee hu[m]bly beseech your M[ajesty] graciously to accept &c. your M[ajesty]'s faithfull subj[ects], the Prelates, and Clergy &c. And by the King's assent to these Bills

fol. 1r (Prynne, pp. 49-50)⁷⁹

Bills, Le Roy remercy ses Loaulz subjects accept Lour benevolence, &c. The Com[mons] having the sole power to grant or deny subsidies and taxes when they see cause, and to limit the p[ro]port[ion] of the[m], the manner and time of paying them; and to order how and by who[m] they shallbe received and imployed, as all actes of this n[atu]re manifest. If then they be the chiefe L[aw] Makers in these Acts which lay any imposit[ion] vpon the subject's goods, or restraint on his perso[n], then by like

⁷⁸ The following words were here omitted by the copyist: 'your High Court of Parliament'.

⁷⁹ As explained in chapter 1, the order of these folios is incorrect. Folio 5r should be the first folio and the last folio should be folio 4v. I have provided the original pagination of Prynne's work here for the reader's reference.

reaso[n] in all other penall publicke lawes.

Sixthly, All Acts of P[arliament] made in the raignes of vsurpers who haue no Title to the Crowne, nor right to assent to Lawes, are firme, and good in Law, and shall binde the right heirs to the Crowne, as is evident by the L[aw] made by K[ing] John, H[enry] [the] 4. 5. [and] 6. (reputed vsurpers by E[dward] [the] 4) and R[ichard] [the] 3. acknowledged an vsurper, whose Lawes are yet in force. The reaso[n] is, (as is clear by 1 E. 4. c. 6.) because the Lawes, and all other Judiciall Acts in Courts of Justice, are the acts of the P[arliament] and Courts them[selve]s, which are Lawfull; not of the K[ing] who is vnlawfull. g^o, certainly the legislative power is more in the P[arliament] then in the K[ing], if not wholly in it, there being Lawes and K[ing]d[ome]s before K[ing]s were.

Seventhly, Admit the K[ing] should dy without Heire, no doubt the K[ing]d[ome] and Pa[rliament] haue a iust right either to alter the govern[men]t, or dispose of the Crowne, to what family they please, as the constant practice of all K[ing]d[omes] in such cases manifest. e. If the King be an Infant (as some of our K[ing]s were when the Crowne descended to the[m]), or non Compos mentis, or taken with a dead palsey⁸⁰ or Apoplexy, or an Idiot by birth or Age, or a Monk p[ro]fessed, or absent in a Pilgrimage to Rome or a Voyage to the holy land e. no doubt in all such cases, the right of creating a Protector to execute Regall power, Sum[m]on P[arliament]s

fol. 1v (Prynne, pp. 50-51)

Parliaments, assent to L[awes], is only in the P[arliament], which may in these cases make any publique Acts without the K[ing]'s personall presence, or assent; and the assent of the Regent, or Protector vsually created by them, shall as firmly binde the K[ing], as if he had personally consented, as is evident by all the Acts of P[arliament] passed during the minority of H[enry] 3. E[dward] 3. R[ichard] 2. H[enry] 6. E[dward] 5. H[enry] 8. E[dward] 6, and by all Acts made in the absence of K[ing]. R[ichard] 1. E[dward] 1. 2. 3. 4. H[enry] 3. 2. 3. 4. 5. 6. and others out of the Realme; all good, as appears by 28 H. 8. C. 17, which altered, and 33 H. 8. C. 22. which declareth the Law in these particulars. A clear demonstr[ation] that the P[arliament] is the most absolute supream power and L[aw] giver, not the King.

Eighthly, The King hath little or no hand in making, but onely in assenting to lawes when they are made by the H[ouses]; as the vsuall forme of passing Acts (Le Roy le veult, the K[ing] wills (or assents to) it, not before, but after they haue passed both H[ouses], imports: which assent of his, if the Bills be publique and necessary for the Com[m]on good, is not meere arbitrary at the K[ing]'s will, but the K[ing] by

⁸⁰ i. e. palsy.

oath and duty is bound to give it, and the Lo[rds] and Com[mons] may in iustice demand it of meere right, as I shall shew anon. His Royall assent then though it be the last act which completes Acts, and makes the[m] Lawes, yet since it is but an assent to a L[aw] formerly made by both H[ouses], which he cannot alter in any point; yea an assent which in Honour, Law, Iustice, duty by vertue of his Coron[ation] oath, is bound to give, (as appears by the prefaces of the most Stat[utes], the Stat[ute] of Provisours, 25 E. 3. Par. 6. 20. E. 3 and other Acts) [it] is so farre from proving the K[ing] the supreme power, and L[aw] giver, that it manifests the contrary, that this power principally resides in both H[ouses], and not the K[ing].

Ninethly, this is apparent by those Coronation Oaths which P[arliamen]ts and the K[ing]d[omes] in King Edw[ard's] daies even before the Conquest, have anntiently prescribed

fol. 2r (Prynne, pp. 51-78)

prescribed to our K[ing]s before they would accept of the[m] for their Soveraignes.⁸¹ After the death of W[illia]m the Conq[uerour], W[illia]m Ruf[us] in the absence of Ro[bert], the elder bro[ther] hastens into Engl[and] to obtaine the Crowne; and finding the greatest p[ar]t of the Nobles ag[ains]t him. He gave his solemne oath and faith to Lanfranke Archb[isho]p of Cant[erbury] that if they would make choice of him for their K[ing], he would abrogate the over-hard Lawes of his father, &c. vpon which conditions, he was chosen and crowned K[ing]. &c.⁸² There hath bene a late vnhappy difference bet[ween] the K[ing] and P[arliamen]t about the word elegerit; the Parliament affirming the w[or]d to signifie, shall choose, according to sundry written Rolles, and printed copies in Lat[ine] and French, the King on the contr[ary] affirming, it should be hath chosen; But he that observes the w[or]d of the anntient Oathes: populo tibi com[miss]o recta[m] justicia[m] exercebis, makes Leges &c. delebis, et bonas observabis, all in the future sense: and the verbes, servabis, facies fieri, &c. all of the[m] in the future; with the whole Scope, intent, and purport of this p[ar]t of the oath, must necessarily grant shall chuse, to be the true reading; and that it refers to the confirmat[i]on of future lawes, not to those onely in being when the oath was administred; else K[ing]s should not be obliged by their oathes, to keepe any lawes made after their Coronations by their owne assents, but onely those their Predecessors assented to, not them[selve]s, which were most absurd to affirme.⁸³

Fro[m] these seuerall oathes &c. It is apparent, first, that Popish P[arliamen]ts

⁸¹ This sentence comes from the middle of page 51, but the next sentence then jumps to the end of page 52.

⁸² The copyist here jumps from line 2, page 53, to the last paragraph of page 56. Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 1st pt, 53–56.

⁸³ The next paragraph jumps to line 28, page 75.

haue deemed the Crowne of Engl[and], not meerely successive, and hereditary, though it hath vsually gone by descent: but arbitrary, and elective, when they saw cause &c. 2^{ly},⁸⁴ that those K[ing]s who haue enioyed the Crowne by successi[on], descent, or electi[on], have still take it vp[on] the Conditions, and Cov[enan]ts contained in their coronati[on] oathes

fol. 2v (Prynne, pp. 78-86)

oaths; &c. And though in point of Law, those who enjoyed the Crowne by successi[on], be K[ing]s, before their Coronations; yet it is still vpo[n] those subsequent conditions in Law, contained in their Coronation Oathes, which impose no new, but onely ratifie the old Condition inseparably annexed to the Crowne by the Com[mon] Law, ever since E[dward] the Conf[essor's] dayes, if not before, as the oathes of all our K[ing]s to their people; really to performe these Articles, and Conditions, fully demonstrate. 3^{ly}, That these Oathes are not meerely arbitrary, or voluntary at the K[ing's] pleasure to take or refute the[m], if he will, but necessary, and inevitable, by the Law, and constant vsage of the Realme, yea of all Xn⁸⁵ K[ing]d[omes] whatsoever, which prescribe like oathes to their K[ing]s. all which I may firmly conclude, that the whole K[ing]d[ome] and P[arliamen]t are the supream Auth[ority] and paramount the K[ing], bec[ause] they may lawfully, and do vsually prescribe such conditions, terms, and rules of governing the[m] to him, and binde him by oath faithfully to performe the lawes. &c.

Tenthly, former P[arliamen]ts haue both challenged and exercised a supream power over the Crowne of Engl[and] itselfe, to transferre it fro[m] the right Heire, and settled it on who[m] them[selve]s thought meete to elect for their k[ing]; and likewise to call their K[ing]s to an account for their misgovern[men]t and breach of Oath to the prejudice of their people, so far as to article ag[ains]t the[m], and either by force of Armes, or a Judicall sentence in P[arliamen]t actually to depose the[m], as many fore-cited presid[en]ts evidence.⁸⁶ Those P[arliamen]ts then, and Nationall Assemblies which haue thus disposed of the Crowne, and K[ing]s the[m]selve]s, and exercised such Jurisdict[i]on over the[m], must certainly be above the[m], and the highest Sovereigne Power. True, it is our Protes[tan]t Peeres[,] Com[mons] and P[arliamen]ts, never challenged, nor exercised such Jurisdict[i]on, and I presume they will never do it. However, it is neither honourable, nor safe for K[ing]s, and the most destructive policy their ill Counsellors can suggest vnto the[m], so far to oppresse

⁸⁴ i. e. secondly. The copyist here jumps to the last line.

⁸⁵ Xn = Christian.

⁸⁶ The copyist here jumps from the second paragraph of page 78 to page 86, omitting several historical illustrations presented by Prynne.

their subjects, or exasperate their

fol. 3r (Prynne, pp. 86-89)

their P[arliamen]ts as to p[ro]voke the[m] to vse the extremity of their power &c.⁸⁷

11. All papists attribute far more divine Authority and Soueraigne Jurisdict[ion] over Emperours, Kings, Princes, K[ing]domes, Subjects, to the Pope their Lo[rd] and God, who[m] they make Supream monarch of the world, and all K[ing]domes in it, and give him greater Authority to Sum[m]on, ratifie, and dissolve g[ene]rall Councells, then euer any Xn K[ing] or Emp[erour] challenged, or vsurped: yet, those who maintaine these Paradoxes of the Pope's Supremacy, confesse, that a g[ene]rall Coun[cell] is above the pope, and may vpon iust Cause, not onely convent, and censure him for his misdeme[anours], but likewise actually, depose him and set vp another in his stead. As the Councells of Pisa, Constans, Basil, (which depose 4 Popes. &c. Now the the Coun[cell] of Basil (as I shewed before) defined, That the whole P[arliamen]t and K[ing]d[ome] hath as great a Power over their K[ing]s, as a Co[uncell] ouer the Pope. g^o, by Pap[ist's] verdicts it is above the K[ing] in point of Soueraigne Power, as a Co[uncell] above the Pope. &c.

12. That Court which may lawfully censure, question, depose, banish, execute the K[ing's] greatest favourites, Officers, Judges, yea, Lo[rd] Protectors the[m]selve[s], the highest Peers of the Realme, and that not onely with but ag[ains]t the King's good will, must questionlesse be the highest power and Jurisdict[ion] in the Realme, else the K[ings] and their Auth[orities] might p[ro]tect them against its iustice. But the P[arliamen]t may Lawfully censure &c. these, not onely without but ag[ains]t e. witnesse the p[ro]ceedings in P[arliamen]t ag[ains]t W[illiam] Longchamp B[ishop] of Ely, chiefe Justiciar, Lo[rd] Chancerlor, L[ord] Vice Roy of Engl[and] in R[ichard] 1. his raigne, during his absence in the H[oly] Land, fro[m] which offices he was by the Peeres and Com[mons] deposed for his misdemeanours, and oppressions, Pierce Gavest[on] e. And shall any delinquent then thinke to be p[ro]tected by any power ag[ains]t the P[arliamen]ts Justice now?

fol. 3v (Prynne, pp. 90-104)

13.⁸⁸ Not to speake of the P[arliamen]ts Power in making or p[ro]claiming warre or peace, in creating the highest Offices, in ordering the Militia of the K[ing]d[ome]

⁸⁷ The copyist here jumps from the middle of the last paragraph of page 86 to page 88.

⁸⁸ The copyist skipped some paragraphs of this point first and started his transcriptions from the last paragraph of page 90. See Prynne, *The Soueraigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 1st pt, 89–90.

by sea and Land, by settled Lawes (of which never anon) or in ordering the Coyne and money of the land, together with the Mint, or designing how the subsidies e. shalbe disposed of, of which there are sundry presid[en]ts. All which are strong evidences of its Sover[aigne] Auth[ority] with the Acts concerning his purveyance, and all Revenues Royall e.⁸⁹ There is one cleare demonstrat[ion], yet remaining, to prove the supream power of P[arliamen]ts aboue k[ing]s, (1) That it is the highest Court and Power to which all Appeales are lastly and finally to be made fro[m] all other Courts and Judges w[ha]tsoever, yea for the K[ing]'s owne personall resolutions, in or out of any other his Courts: and such a transcendent Tribunall fro[m] whence there is no Appeale to any other Court or pers[on], no not to the K[ing] hims[elfe], but onely to another P[arliamen]t.⁹⁰ Now this is an infalliable Maxime, both in the Civill, Com[mon] and Canon Law, that the Court or perso[n] to who[m] the last appeale is to be made, is the supreamest power &c. If there be any differences betw[een] King or subject, touching any Inheritances, Priviledges, or Prero[gatives] belonging to the Crowne itselfe, or any points of misgovern[men]t; yea which is more, if there be any suit, quarrell, or difference betw[een] our K[ing]s in act, and any other their Competitors, for the Crowne itselfe, the Lo[rds] and Com[mons] in P[arliamen]t are and ought to be the sole and finall Judges of it. Whereof many instances e.⁹¹

If any heere object ag[ains]t the premises, That the K[ing] is the onely supreme Governor of this Realme, That Bract[on], Fleta and our lawe books resolve: That the K[ing] hath no Peere in his K[ing]d[ome], for so he should lose his empire, since Peers (or equalls) haue no com[m]and over one another: much more then ought he not to

fol. 4r (Prynne, p. 104)

to haue a superiour or mightier; for so he should be inferiour to those who are subject to him; and Inferiours cannot be equall to Superiours. Tho[ugh] K[ing] ought not to be vnder man, but vnder God, and the Law. If then Justice be demanded of him by way of pet[ition] (because no writ runns ag[ains]t him, though anniently some Writs did) if he do not justice, this punishm[en]t, may be sufficient to him, that he may expect God will revenge it. Nemo quidem de factis suis praesumat disputare, multo fortius contra factu[m] suu[m] venire &c. Therefore the K[ing] is above the P[arliamen]t and whole K[ing]d[ome], not they above him.

⁸⁹ The copyist here jumps from the middle of the last paragraph of page 90 to the second paragraph, point 14, of page 92.

⁹⁰ The next sentence jumps to the first line of page 93.

⁹¹ The copyist here jumps from the first paragraph of page 93 to page 104, mainly omitting historical illustrations provided by Prynne.

I answer, first, that the meaning of all these books is, that the K[ing] is above every one of his subjects, and hath no Peer, nor superiour, if they be taken particularly and distributively, as single men, as the words *Parem*, *Superiorem*, in the singular nu[m]ber, and the like, explaine the meaning of the Bookes to be. But if we take the[m] Collectively in P[arliamen]t, as they are one body, and represent the whole K[ing]d[ome]; then these very Authors resolve (in their fore-quoted words), that they are above the K[ing], and may and ought to restraine and quest[ion] his actions, if there bee cause.

Secondly, Bract[on] explaines hims[elfes], how he is highest and without a Peer, to wit, in distributing Justices, that is, He is the highest Justiciar in the K[ing]d[ome], but as small as any in receiving Justice.⁹²

3. Even in P[arliamen]t itselfe, the K[ing] is the supreame member, and in that regard, the P[arliamen]t in most Acts, and in all Pet[itions] or Addresses vsually stiles him Their Soueraigne Lord: Besides, the P[arliamen]t its[elfe] is euer sum[m]oned, dissolved by his writ, in his Name, by his Authority: And in passing all Acts and Bills of Grace, or such as are not simply necessary for the publique safty and vtility⁹³ of his people, He hath an absolute negative voyce, and his Royall

fol. 4v (Prynne, pp. 104-105)

Royall assent is simply necessary for the passage of all binding lawes. In which respects he is, and maybe truly said to be above the P[arliamen]t itselfe and the onely supreame Governor; but yet in the forenamed respects, the P[arliamen]t &c.

Fourthly. The oath of Supremacy, That the King is the onely supreame Governor, relates onely, or principally to the Popes, and foraing Princes Authourities, formerly vsurped in this Realme, as the Title, words, and Scope of the Stat[ute] of Eliz[abeth] c. 1. and the very next words in the Oath of Supr[emacy] manifest: (and that no foraigne power, perso[n], prelate, state or potentate hath or ought to have any Jurisdict[i]on, power, superiority, preheminence⁹⁴ or Authority, Ecclesiasticall or Spirituall whithin this Realme; And therefore I do vtterly renounce and forsake all foraigne Juisdictions, &c.) g^o, It refers not at all to P[arliamen]ts, or their Jurisdict[i]on, power, Superiority, &c. not so much as once thought of by the prescribers of this Oath, which had its Authority fro[m] the P[arliamen]t, and made some addit[i]on to the K[ing's] Prerogative.

⁹² CF: 'but as low as any in receiving Justice'. See Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Foure Parts*, 1st pt, 104.

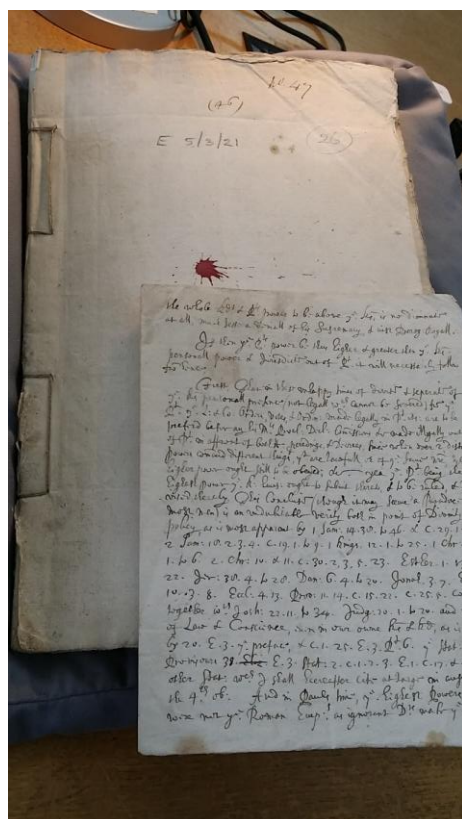
⁹³ i. e. utiliy.

⁹⁴ The printed version has the same spelling of 'preeminence' as we nowadays spelled it, but the word in manuscript is clearly spelled 'preheminence'.

5. Bodin, and others assures us that the Soueraigne Power and Jurisdict[ions] both in the Roman and German Emp[ires] and most foraigne Xn K[ing]d[ome]s, was and yet is in the Senate, people, Par[liamen]ts and Diets⁹⁵, yet this is no impeachm[en]t at all to their supremacies, no more then the asserting of G[ene]rall Councells to be above Popes them[selve]s, by the learnedst Papists, is any derogat[ion] (as they hold it is not) to the Popes most absolute pretended Sovereignty, above all Emp[erours], K[ing]s &c. and the world its[elf] of which they affirme him sole monarch. g^o, by the selfe-same reaso[n], this asserting of the

[End of E5-3-46]

The misplaced final part of E5-3-46 in E5-3-21 'Mr St John's speech in the Upper House of Parliament 1641, January 14'.⁹⁶



fol. 1r (Prynne, pp. 105-106)⁹⁷

the whole K[ing]d[ome]s and P[arliament]s power to be above the K[ing]s, is no diminut[ion] at all, much lesse a denial of his Supremacy, iust Prerog[ative] Royall.

If then the P[arliament]s power to be thus higher and greater then the K[ing]s

⁹⁵ CF: 'Dyets'. Prynne, *The Sovereigne Power of Parliaments and Kingdomes Divided into Four Parts*, 1st pt, 105.

⁹⁶ I reported this issue to a librarian on 23 July 2016 when I revisited the library.

⁹⁷ The content of this folio follows folio 4v.

personall power and Iurisdic[tion] out of P[arliament], it will necessarily follow fro[m] hence.

First, That in these vnhappy times of divis[i]on and seperat[i]on of the K[ing]s personall presence (not legall, which cannot be severed) fro[m] the P[arliament], the L[ords], and Co[mmons] Orders, Votes, and Ordin[at]ions made legally in P[arliament] its[elfe] are to be prefered before any his M[ajestys] Procl[amations], Decl[arations], Com[m]issions &c. made illegally out of P[arliament] in affront of both H[ouses'] proceedings, and decrees, since when ever 2 distinct powers com[m]and different things, that are lawfull, or of the same n[at]ure, the higher power ought still to be obeyed; &c. yea the P[arliament] being the highest power, the K[ing] him[s]elfe ought to submit thereto, and to be ruled, and advised thereby. This conclus[i]on (though it may seeme a Paradoxe to most men) is an vndubitable verity both in point of Divinity and policy, as is most apparent by 1 Sam: 14. 38 to 46 and c. 29. 1 to 11. 2 Sam: 18. 2. 3. 4. c. 19. 1. to 9. 1 Kings 12. 1. to 25. 1 Chr: 13. 1. to 6. 2 Chr: 10 and 11. c. 30. 2, 3, 5. 23. Esther 1. 13. to 22. Jer: 38. 4. to 28. Dan: 6. 4. to 20. Jonah: 3. 7. Ezra. 10. 3. 8. Eccl: 4. 13. Prov: 11. 14. c. 15. 22. c. 25. 5. compared together with Josh: 22. 11. to 34. Judge: 20. 1. to 20. and in point of Law and Conscience, even in our owne K[ing]s and K[ingdome], as is clear by 20. E. 3. the preface, and c. 1. 25. E. 3. P[arliament] 6. the Stat[ute] ag[ains]t Provisours 38. E. 3. Stat[ute] 2. c. 1. 2. 3. E. 1. c. 17. and 48. and other Stat[ute] which I shall hereafter cite at large in answer to the 4th ob[jection]⁹⁸. And in Pauls time, the highest powers in Rome were not the Roman Emp[erors] as ignorant D[octors] make the vnlearned world

fol. 1v (Prynne, pp. 106-107)

world believe, but the Roman Senate, who had full power not onely to elect, and com[m]and, but censure and depose their Emp[erors] and adjudge the[m] vnto death, as Bodin acknowledgeth &c.

2. That the P[arliament]s resisting the K[ing]s personall Com[m]ands, (especially such as are illegal, and destructive to the K[ingdome]) or any private Subjects resisting the[m] by vertue of a Publique Ordin[ance] or Counterterm[an]d fro[m] the P[arliament], is no resisting of the higher Powers, but a direct Submiss[i]on to the highest p[ower] and those who resist the P[arliament]s Ord[inances] e. (especially such as send to the preservation of Rel[igion], Lawes &c.) though they do it by an extrajudiciall Counterterm[an]d fro[m] the K[ing] or his ill Coun[sellors] do both in

⁹⁸ The following words were here omitted by the copyist: 'concerning the Kings negative voice'.

point of law, divin[i]ty, Consc[ience] resist the highest p[ower] &c.

3. That the resolutions, and Decl[arations] of the Lo[rds] and Co[mmons] in P[arliament] ag[ains]t the Com[mission] of Arr[ay], Arming of Pap[ists], raising forces, imposing taxes &c. ought to be obeyed, both by the K[ing] hims[elfe], the K[ing]d[ome], and every private subj[ect] w[ha]tsoever; and that the K[ing]s extrajud[icia]ll and illeg[all] Decl[arations] out of P[arliament] in direct opposit[i]on to &c. ought not to be obeyed; The K[ing] Hims[elfe] being no competent Judge (as our L[aw] books resolve) especially out of his Co[u]rts what is Law, or what not in those Cases, but the P[arliament] onely. &c.

4. That the P[arliament] and whole K[ing]d[ome], being the highest power, or any member of the P[arliament], cannot by any publique Acte or votes of theirs consented to in P[arliament], become Traitors, or guilty of High Treaso[n] ag[ains]t the King, either by the Co[mmon] L[aw] or the St[atute] of 25, E[dward], 3, c[hapter], 2, which run[n]ing in the singular nu[m]ber; If a man &c. (that is, any private man, or men by their owne private Authority) shall levy warre ag[ains]t the K[ing] &c. it ought to be iudged high treason; extends not to the whole K[ing]d[ome] &c, of which no Treas[on] was ever yet presumed, and by this very Act is included within the words or meaning of any Lawe concerning Tre[ason] and g^o cannot be guilty of it. 5.

fol. 2r (Prynne, pp. 108-112)

5. That to conspire, or levy war ag[ains]t the P[arliament] or K[ing]d[ome] is no lesse then H[igh] treas[on], as hath bene solemnly adjudged in P[arliament], 15. E. 2. 11. R. 2. c. 2. 3. 4. and in the P[arliament] Roll printed by Order of both H[ouses] Aug[ust] 27, 1642 &c. If no lesse then high tr[ea]son ag[ains]t the K[ing] to slay the Chancellor, Treasurer, or any of the Judges &c. then much more &c.⁹⁹

6. Hence likewise it necessarily followes, that the H[ouses] of P[arliament] being the Soueraigne Power, ought of right to enjoy, and may when they see just Cause for the K[ing]d[ome's] safety and benefit, order and dispose the Militia, Navy, Ports, Forts, and Am[m]unit[i]on of the Realme, into such persons Custodies, as they may safely confide in; nominate both the great Councillors, publique Officers &c of right require (if not enforce, it willingly denied) the K[ing]s assent to all publique Bills of Right and Justice necess[ary] for the Co[mmon] W[ea]lth late vp defensive Armes to

⁹⁹ The copyist here jumped from the very beginning of page 109 to page 112, mainly omitting historical illustrations raised by Prynne.

p[ro]tect their Priviledges, Lawes &c. not onely ag[ains]t Malig[nan]ts &c. but the
K[ing] hims[elfe], if he raise forces ag[ains]t the[m], yea impose taxes vpo[n] the
Subject, and distraine &c. /

Finis Partis Primae

E5-3-49: ‘Treatise on the Royal Prerogative and the Right of Parliament to resist Royal Power’

This manuscript contains text extracted from Jeremiah Burroughs, *The Glorious Name of God, the Lord of Hosts* (London: Printed for R. Dawlman, 1643), 27–32, 35. Some of the extracted sentences were further condensed by the copyist and some were rephrased.

A comparison with the printed text reveals the copyist used the following conventions:

- (1) The signal ‘&c’ means the copyist skipped some sentences or passages.
- (2) g^o = ergo = therefore.
- (3) Cond: = command

Some frequently met abbreviations:

L: = Lo: = Lords	the(m)s = themselves
P: = Par ^{lt} = Parliament	Xn = Christian
Co: = Common(s)	agt = against
vp(o) = upon	Au(th) = Authority
Pap: = Papist	Scrip: = Scripture
Emp: = Emperour	Reg: = Regal
presid ^{ts} = presidents = precedents	

fol. 1r

ob: Wee fight against the King.

A: No, but for our Lawfull Liberties & which wee inherit as truly, as the King any thing he hath. for our Reli[gion] our chiefe inheritance. The Law of nature and Script[ure] teaches us to defend ourselves from violence, and wrong.

2 [secondly] for the K[ing]: (1) for the preservat[ion] of true Regall Power in the King and his posterity. Also, to rescue him out of the hands of evill men. The Scrip[ture] bids the wicked should be taken from the throne of the King and If a represent[ative] K[ing]d[ome] hath not power who hath?

3 [Thirdly] wee fight not against the power of the King. His power is that which the Lawes of the Land invests him with. But subj[ect] to and not to the wills of those who are in highest place.¹⁰⁰ If wee be either actively or passively subject to the

¹⁰⁰ CF: ‘The Scripture bids us be subject to the higher powers, Rom. 13.1. It doth not bid us to be

Lawes of that Countrey wherein we live, we fulfil the very lre [i.e. letter] of that Scrip[ture]. Therefore, that which now is done is not against the King, being onely against his personall Co[mma]nd, not his legall power. When wee speak of a King, wee meane such a man invested with a Regall power by the Lawes, and Constitutions of that Countrey hee is the King of. Now then if nothing be done against the power, nothing can be said to be done against the King. People [are] much mistaken who do not distinguish betw[een] a man in authority, and the auth[ority] of that man. A man in authority may co[mma]nd what auth[ority] co[mma]nds not. The authoritative Co[mma]nds of the King consist not in his personall verball co[mma]nds, His authority is in his Co[mma]nds by his Officers seales, and Courts of Justice, and whatsoever is his Co[mma]nd in one Court may be appealed fro[m] to a superior and so to the highest, and there wee must rest.¹⁰¹

fol. 1v

ob: The King saies that which is done, is against Law.

A: If when the most inferior Court of Justice determines any thinge to be Law, it is not the K[ing]'s personall dissent, and saying it is not law that disannuls it, but the judge[men]t of some superiour Court, then if the highest Co[urt] shall judge a thinge to be Law, the personall dissent of the King cannot disannul it.

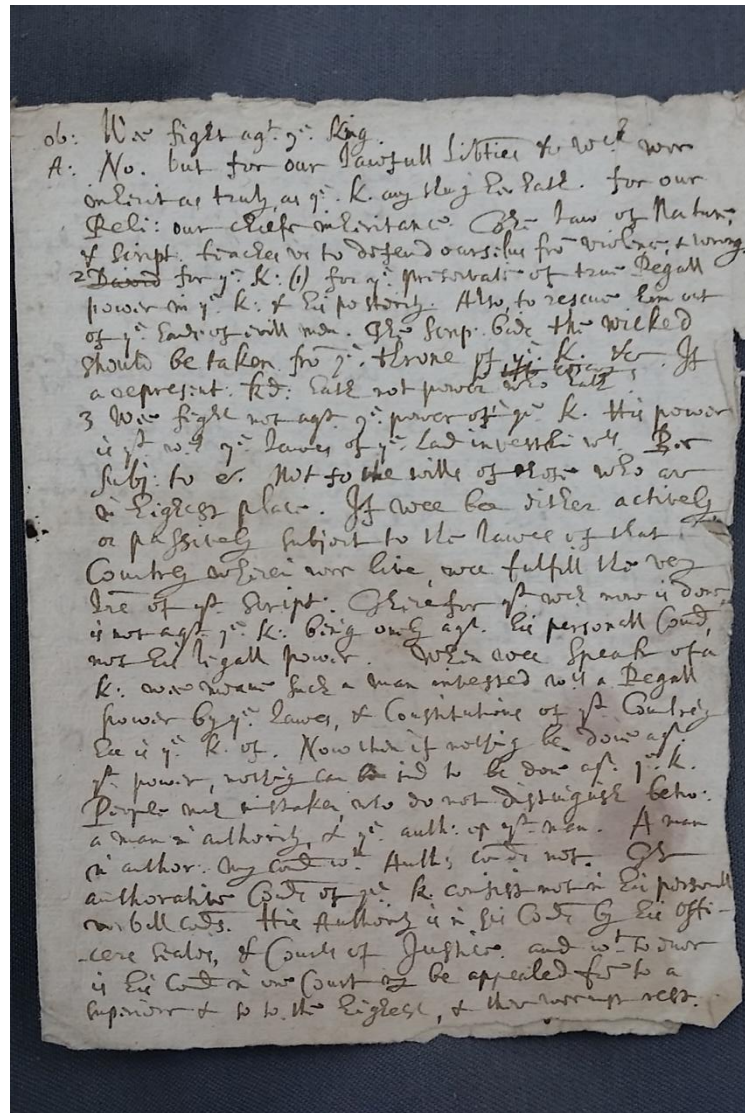
Ob: Tho[ugh] the Par[liamen]t tell us what they do is law, they shew not where that law is.

A: Our C[ommon] w[ealth] is governed not onely by Stat[ute] law, but Co[mmon] law. (1) Recta ratio, so adjudged by Judges appointed thereto by law, and this is various, as cases occur, so that tho[ugh] some presidents [i.e. precedents], some g[ene]rall maximes of this Law be extant, yet if new cases arises, then there must be determination accord[ing] to the nature of such a new case, which determination by such as are appointed Judges, is now Law, altho[ugh] no where written before. And certainly wee hath now such things fallen out as no former time can show preced[en]ts of, as that a K[ing] should go from his Parliament, take vp armes &c., g^o we can expect no preced[en]t of what determinations there can be in these cases, and

subject to the wills of those who are in highest place'. Burroughs, *The Glorious Name of God, the Lord of Hosts*, 28.

¹⁰¹ This is a very difficult sentence. CF: 'Many, if not most men mistake in this, they think the authoritative commands of the King chiefly consist in his personall verball commands, but the truth is, his authority is in his commands by his Officers seals, & Courts of Justice; we may appeal from his personall verball command, to his command in his Courts of Justice, & whatsoever is his command in one Court of Justice, may be appealed from to a superior Court, and so to the highest, and there we must rest.' Ibid., 29.

some determ[inations] of necess[ity] we must have or else we shall run to Confusion. The determ[ination] then of the highest Co[urt], we must account Law in this case. The way of determining cases that fall out in the Co[mmon] Law is this. 1. The determination must not be against Stat[ute] Law. and so is it now; no stat[ute] against it.¹⁰² 2. It must be accord[ing] to some g[ene]rall Maximes of that Law. Now this is one great one, Salus Populi &c, and according to this their deter[mination] is.¹⁰³



¹⁰² CF: 'and so is the determination of Parliament now, there is no Statute Law against it'. Burroughs, *The Glorious Name of God, the Lord of Hosts*, 30.

¹⁰³ A very important point here, the sentence in the printed version goes 'Secondly, it must be according to some generall Maximes of that Law. Now this is one great maxime of it, Salus populi suprema Lex, The safty of the people is the supreme Law: and according to this their determination is'. Ibid.

fol. 2r

3. When any inferiour Judge makes this determination against any party that thinks himselfe wronged, hee makes his appeale to the K[ing's] bench, if he have not right ther[e], he hath a writ of appeale ad prox[imum] Parl[iamen]tum; so that it is apparent, that Parliament is supreme Judge of what is recta Ratio, in case of difficulty, and Controversy.

Ob: A d[etermina]t[i]on that Parliament Judge, how can it iudge without the K[ing]?¹⁰⁴

A: True, for making a stat[ute], all the 3 est[ates] are required to be ioyned, but for the determination of what [i]s law, that may be done by both Ho[uses], in the absence of, or without the knowledge of the K[ing], as usually it is. In Cases that are brought before them, in the punish[men]t of delinq[uen]ts, they doe not send to the K[ing] for his assent to ioyne with them in their determinations, but in those proceed as a Co[u]rt of Justice themselves.

Ob: May wee resist authority abused?

A: Differences betw[een] the Co[mma]nds that are from abused authority, and the Co[mma]nds that are from the wills of men in Authority, but not from the authority of those men. That is abused Authority, when those to who[m] power of making Lawes belong, shall make evill Lawes; in this case no helpe, but passive obedience, or flying, vntill some way may be taken for rectifying that Authority that is abused. But when men that are in Auth[ority] co[mma]nd any thinge out of their owne wills, which is no law, it is not Autho[rity] that doth co[mma]nd it [;] in this case, there is no resisting of Auth[ority] at all, although the things be denied that is co[mma]nded; in such a case, of we neither yield active, nor passive obed[ience] [,] wee

fol. 2v

wee cannot be said g^o to resist Authority. &c.

Every Countrey in the first Constitut[i]on of the govern[men]t, hath power to divide the Gover[nmen]t so much to the Nobiles, so much to the Commons, as they shall see best suitable to the condition of their Countrey.¹⁰⁵ &c. That there should be

¹⁰⁴ CF: 'But yet it may be said, Grant the Parliament to be the Judge, how can it iudge without the King?' Ibid., 31. CF: 'y.^e Par^t Judge, how can ut iudge without y.^e K'. See Rossi, *La vita*, vols 3, 499.

¹⁰⁵ CF: 'Every Countrey in the first constitution of the Government, hath power to divide the Government, so much to the Kings, so much to the Nobles, so much to the Commons, as they shall see best suitable to the condition of their Countrey'. Burroughs, *The Glorious Name of God, the Lord of Hosts*, 35.

Civill Govern[men]t G[od] hath appointed but &c. If the kinds of Civill Govern[men]t were of Divine institution, it must be all the same in every compleate Co[mmon] w[ealth], which no man &c. Eccle[siastic]all Govern[men]t, because it is Spir[itua]ll, and hath Spi[ritua]ll efficacy, it must g^o of necessity be of Divine institution, and so the same in all places in the world where Churches are compleate.

[End]

Part II

Letter from Lord Herbert to Rouse, a Bodleian Librarian, in MS. Bodl. 910

Whereas Mr Thomas Master fellow of New Colledge in Oxford was desired by mee to deliuer vnto the University Library the History of Henry 8: written by my selfe; and a worke of Doctor Donnes called Biathanatos which was dedicated vnto me, the said bookes to bee locked vp in a Cabbinet and deposited in the University Library vntill I departed out of this life or gaue further order. All which (as I conceiued) was done according by; and whereas yet a Servant of myne, returning lately from Oxford tould me the said books and Cabbinet were not in the Library. I shall therefore take the bouldnesse to desire you to demannd the sayd books and Cabbinet of the Executors of Mr Tho[mas] Masters and to keepe them after the manner aboue specified in the Library, or if any difficulty bee made concerning the delivery of them to jnforme mee thereof, and to returne mee your answer if you please[,] which I shall desire you to leaue in S[i]r Edward Herbert his Ma[jes]ties Attorney Generalls hands, who will take care to send it to mee, soe I desiring you to excuse this Trouble I rest,

Mountgomery Castle
the last of January
1643

your very resspectfull and affectionate friend
Herbert

VH

Whereas M^r Thomas Master fellow of New College
in Oxford was desired by mee to deliver unto the
University Library the History of Henry. 8. written by
my selfe: and a worke of Doctor Domes called Biathanatos
which was dedicated unto mee, the said booke to bee
locked up in a Cabinet and deposited in the
University Library untill I departed out of this life
or gave further order. All which as I commanded was
done accordingly: and whereas a servant of mine, returning
lately from Oxford told mee the said booke and
Cabinet were not in y^e Library, I shall therefore take
the boldnesse to desire y^e to demand the said
booke and Cabinet of the Executors of M^r Tho. Masters
and to keepe them up in the manner abovespecified in
y^e Library, or if any difficulty bee made concerning the
delivery of them to informe mee thereof, and to returne
mee y^e answer if y^e please which I shall desire y^e
to send in Sr Edward Herbert his M^{rs} Attorney Generalls
hands, who will take care to send it to mee, and desiring
y^e to excuse this trouble I rest

Montgomery Castle
y^e Last of January
1673

I am very respectfull & affectionate friend
Herbert

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 - (e) E5/3/45: Notes on the King, Parliament and the Civil War
 - (f) E5/3/46: Treatise on the Powers of King and Parliament
 - (g) E5/3/49: Treatise on the Royal Prerogative and the Right of Parliament to Resist Royal Power
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